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The times impose on the organized Bar new duties and new opportunities for leadership of informed public opinion. We are not living or carrying on our work in the era or mood of 1878. We cannot put in our own way the barriers and hurdles of narrow and ancient concepts of our objectives. Whatever goes to the heart of defending and maintaining our Constitutions, our laws, our form of government, and the right of men to live their lives in freedom from others' tyranny, must be within our Association's province unless we are to fail our country and ourselves.

From a Report to the House of Delegates on February 23; quoted in editorial: "'Object' of our Association" (page 300)

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About 100 appointments are to be made of Hearing Examiners for federal agencies, from applicants who are not now in regular status as Examiners (see our March issue, page 179). At salaries from $6000 to $10,000 a year, these posts should be attractive to many in our profession. An editorial comments on the opportunity.

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This significant annual survey, first appearing in the JOURNAL in April of 1947 (33 A.B.A.J. 381), comes at a time when its subject-matter is background for the consideration of many momentous proposals which are only beginning to attract and receive the thoughtful consideration which Americans should give to them.

American Bar Association 1947-1948

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House of Delegates:

Votes Many Important Actions February 23-24

■ Convened at the Edgewater Beach Hotel, in Chicago, for its sessions midway in our Association year, the House of Delegates devoted February 23-24 to a heavy calendar of business and took more actions of vital importance to the public and the profession than any other meeting in our Association's history. With an attendance of 168 members and every State and the Territory of Alaska represented, the House debated earnestly and on a high plane the many proposals, voted with a manifest awareness of their public importance, and heightened its stature as the representative senate of the profession of law.

Some of the actions voted were of a controversial character and disclosed differences of reasoned opinion, but debate led to decisions by decisive votes. The leadership of President Tappan Gregory was manifested when he took the floor, at times, to support actions which he felt that it was important for the Association to take. At no stage was the debate hurried or the consideration of measures inadequate; and under the urbane presiding of Chairman Howard L. Barkdull the House completed its business in four sessions on the two days, without need for meeting on the third day, which had been made available.

The actions voted which related to matters pending in the Congress or Government of the United States were brought promptly to the attention of the legislators and public officials involved. In a number of instances, the legislative prospects of the endorsed measures were substantially improved by the Association's support. To an unusual extent, the actions voted have been the subject of news articles and editorial comments in newspapers throughout the United States.

■ As is usual after a meeting of our Association or the House of Delegates, this issue of the JOURNAL is devoted considerably to reporting the debates and actions. The usual account of the proceedings of the House is given on pages *post;* but several of the matters discussed and decided are reported in separate articles. The following is a summary of the principal actions voted, with references to the pages of this issue on which their full text and accompanying accounts will be found:

Declaring emphatic opposition to the spread of Communism and unlawful acts of Communists in the United States, favoring the registration of Communists and Communist organizations and other means of resistance to Communist inroads, but insisting that constitutional rights and safeguards shall not be abridged as to Communists (see page 281 of this issue).

Recognizing the urgent need of great numbers of our people for decent homes which they can own or rent, and favoring active federal assistance to their construction, principally by private enterprise with federal encouragement and aid, but with public construction of low-rental units in particular areas where necessary and with federal loans to municipalities and States for slum clearance and the re-building of blighted areas, etc. (see page 269 of this issue).

Taking preliminary action as to the Draft Covenant and Draft Declaration on Human Rights and several proposed Measures for Implementation of the Covenant, and setting up procedures whereby the views of the Bar Associations and individual members may be expressed and taken into account as to those documents (see pages 277 and 301 of this issue and page 200 of our March issue).

Supporting strongly the enactment of S. 1988 to confirm State titles to tidal lands despite the *Tidelands* decision (*U. S.* v. *California,* 332 U. S. 19), and opposing any compromise legislation on the subject (see page 279 of this issue).

Recognizing the military obligation of citizenship as implicit in our Constitution and laws, and favoring the enactment of legislation for universal military training of young men and women at suitable ages (see page 287 of this issue).

Approving and directing further

studies for the development of plans for ending or lessening the federal tax inequities against partners in and proprietors of unincorporated businesses, including members of professions, and asking for a specific plan "as soon as practicable" (see page 343 of this issue).

Reiterating our Association's staunch support of the recommendations of the Advisory Committee on Military Justice, appointed by the War Department on nomination by our Association, and especially urging that the Elston bill (H. R. 2575) which has passed the House of Representatives be amended so as to carry out the recommendations for ending "command control" of trials, decisions, and sentencing by Army courts martial, including the selection of members of the Court and the prosecution and defense officers (see page 288 of this issue and page 216 of our March issue).

Reaffirming its previously-voted approval, in principle, of the Marshall Plan (ERP) for American aid to European recovery and resistance to the spread of Communism (see page 286 of this issue).

Urging that the nomination and election of members of the International Law Commission of the United Nations shall be of lawyers and jurists of the highest experience, prestige and authoritative scholarship in the field of international law (see page 271 of this issue).

Urging a re-examination of the bases of the Social Security Act and recommending for consideration some fundamental changes in its formulae for payments (see page 343 of this issue).

Approving and supporting basic legislation for strengthening the American patent system (see page 344 of this issue).

Reaffirming support of enactment of the Jennings bill (H. R. 1639) as to the venue of actions under the Federal Employers' Liability Act but favoring considered amendments of the bill which has passed the House of Representatives (see page 341 of this issue).

Approving and supporting the submission to the States of various amendments to the Constitution as to the Supreme Court of the United States (see page 1 of our January issue and page 342 of this issue).

Recommending the creation of additional United States District judgeships in the Southern District of New York, to relieve serious calendar congestion and delays in trial (see page 343 of this issue).

Approving our Association's participation in legal phases of the work of the National Conference on Family Life, the organization of its Legal Section, etc. (see page 341 of this issue).

Approving the Board of Governor's settlement of a long-standing and provocative controversy as to certain law lists (see page 341 of this issue).

Directing the Committees on Commerce and on Employment and Social Security to make a joint study and report as to the advisability of substituting a Workmen's Compensation Law for the Federal Employers' Liability Act as to the tort liability of interstate carriers, etc., for personal injuries or death of employees (see page 341 of this issue).

Receiving from the Board of Governors a report that it had established an insured pension and retirement system for Association employees of long and faithful service (see page 342 of this issue).

Giving necessarily considerable attention to Association finances, in view of the marked increase in the cost of supplies and operations, and deciding against "deficit financing" even for worthy projects.

To an extent unsurpassed by any previous meetings of the House, the foregoing is believed to constitute an impressive record of contributions to an informed public opinion on vital subjects. It should be borne in mind that these actions were taken on February 23-24, not at the time this issue comes to the desk of our readers. The decisions were made with relation to the situations and the proposals before the House late in February. Many of the matters have moved swiftly since that time, perhaps partly because of the House action. An instance is the declaration as to the military obligation of citizenship and legislation for universal military training, which received marked impetus from the House vote even before President Truman took his emphatic stand of March 17. Another instance is federal aid for housing, as reported on page 270 of this issue.

As to the resolutions concerning Communists and Communism, the House voted on the proposals which were before it in February. Definitive legislation drafted by the Nixon Sub-committee of the House of Representatives was not then available for consideration. The Association's stand as to Communism received extensive editorial comment and commendation throughout the United States. Further action will be taken as specific bills come to the stage of legislative consideration.

Other Agencies of Our Association Hold Meetings

The mid-winter convening of the House of Delegates was occasion also for other meetings. The Board of Governors held sessions on February 21-22. Several Councils of Sections met on those days, including the Council of the Junior Bar Conference (see page 327 of this issue). The Committee for Continuing Legal Education held several sessions and advanced its work.

Although no meeting of the Advisory Board of the JOURNAL had been called in advance, nearly twenty members of that Board who were in Chicago met informally on the evening of February 22 and discussed JOURNAL policy and problems, preliminary to the meeting of the Board of Editors on February 23. The usual conference between the Chairmen of

Sections and the Board of Governors took place on February 22 and was helpful to the coordination and dispatch of our Association's work.

After the House adjourned, the independent Council for the Survey of the Legal Profession held sessions during the rest of the week, with Judge Orie L. Phillips, of Denver, Colorado, presiding as Chairman. Among those present was Chief Justice Arthur T. Vanderbilt, of New Jersey. Plans developed by Director Reginald Heber Smith and his assistants were submitted and discussed, and appropriate authorizations were given. The Survey project was found to be well under way.

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Howard L. Barkdull Heads Committee on Scope and Correlation of Work

▪ The House of Delegates in Chicago on February 23-24 elected the five members to constitute the highly-important new standing Committee on Scope and Correlation of Work of our Association (new Section 17(a) of Article X of the By-Laws; 33 A.B.A.J. 781-782, August, 1947). The Committee immediately organized by choosing as its Chairman Howard L. Barkdull, of Cleveland, Ohio, who will retire as Chairman of the House of Delegates at the adjournment of the 1948 Annual Meeting in Seattle. Potentially, in its provisions for long-range planning, integration, and selection of work, the Committee should prove to be one of the most valuable agencies of our Association, and the selection of the five first members was made in a manner befitting its importance.

▪ Nominations for the new Committee were made in the manner reported in 34 A.B.A.J. 14; January, 1948. A committee headed by former President Joseph W. Henderson, of Pennsylvania, asked for nominations from all members of the House of Delegates and selected ten from the many suggestions received. At the opening session of the House of Delegates on February 23, an opportunity for nominations from the floor was accorded. Two nominees by that method withdrew their names.

The voting by mimeographed ballots containing the ten names took place on February 24. The following were elected:

HOWARD L. BARKDULL, a member of our Association since 1925, who has been delegate of the Ohio State Bar Association (1938-42), State Delegate from Ohio (1942-49), elective member of the Board of Governors (1944-45), an Ohio member of the National Conference of Commissioners on Uniform State Laws since 1940, Chairman of the House of Delegates (1946-48), and an *ex officio* member of the Board of Editors of the JOURNAL.

WILLIAM J. JAMESON, of Montana, a member since 1926, who has been the delegate of the Montana Bar Association (1936-38), State Delegate (1938-43), member of the Board of Governors (1943-46), Assembly Delegate (1946-48), member of the Advisory Board of the JOURNAL.

JACOB M. LASHLY, of Missouri, a member since 1913, member of the old Executive Committee and Board of Governors (1935-38), President of the Association (1940-41), President of the ABA Endowment (1941-48), member of the advisory Board of the JOURNAL.

JAMES L. SHEPHERD, Jr., of Texas, a member since 1928, delegate of the State Bar of Texas (1939-44), State Delegate (1944-48), and a member of many Sections and Committees of our Association.

ROBERT R. MILAM, of Florida, a member since 1928, delegate of the Florida State Bar Association (1941-48), State Delegate (1947-50), and Chairman of the Committee on the Bill of Rights (1946-48).

It was generally recognized by members of the House of Delegates that any of the ten nominees could advantageously have been elected to the Committee and that no reflection whatever on those not elected was involved in the choices made for the representative group.

The new committee will have no power to put its recommendations into effect, but is expected to be effective in lessening overlapping and duplications of work by Sections and Committees and in making proposals whereby the Association will plan and choose more carefully the activities it will undertake and emphasize, so as to keep their cost within the limited financial and manpower resources of our Association.

Blackstone Studios

HOWARD L. BARKDULL

3

Teachers of Law:

Are They Members of the Legal Profession?

by John Hanna • Professor of Law, Columbia University School of Law

■ The bold question which heads this article is the author's own. He writes earnestly and with vividness of detail: Are the law professors the "forgotten men" of the Bar? Have the teachers and the practitioners been drifting apart? Is the fault solely on the side of the practitioners and Courts, or have some law professors alienated the confidence and support of many practitioners? Are their emoluments and their place in the profession what a healthy organization of it would make advisable? These may be questions for the Survey of the Legal Profession, but Professor Hanna does not hold them for that. He is especially exercised that time spent in teaching law is not accredited, by some Courts and Bar admission boards, as time spent in law practice or its equivalent. In any event, Professor Hanna has written a challenging article, which will be widely discussed and should be remedially considered on its merits.

■ Universities now have almost a monopoly of legal education. Few would question that this development has improved the training of lawyers. Men learned in special fields of law devote all or nearly all of their energies to their primary task of instruction. The students have the advantage of law and general libraries that no other form of training could afford. By contacts in Bar Associations, in the American Law Institute, and through books and articles, the tendency to the isolation of the professor has been arrested. Nevertheless there is still considerable separation of the professors from the rest of the profession, and that separation has unfortunate consequences.

Law teaching, as contrasted with office practice, has numerous attractions. The teacher has that greatest of all luxuries—almost absolute control of his time. He can do the things that most appeal to him. His freedom to specialize and his opportunity for generalization give him both a present and permanent professional influence greater than that which can be attained by most other lawyers. On the other hand, even if he freely abjures the financial rewards of the successful practitioner, there is a limit to his vows of poverty.

It must be remembered that no one can be considered for a position as law teacher in the leading universities unless he has been close to the top of his class in a first-rate law school. Usually, he must have also several years of successful practice. He is properly thought not to be fitted to be a teacher unless he has the capacity to become a leader of the Bar.

The Pay of Law Professors a Concern of the Bar

As little as ten years ago, the salaries of law teachers, although low compared to incomes of the successful men at the Bar, were enough for a modest scale of living and made possible enough savings to provide for education of children and a comfortable old age. Since that time, while salaries have remained almost static, ordinary living costs and school tuitions have been doubled and taxes have been multiplied manyfold. The professor has no chance to reduce his expenses. He must have books; he must attend professional meetings; his children are entitled to the best education; and he ought to maintain some social contacts with other successful people.

Older professors have little opportunity to give up their work, although some of them can occasionally return to practice. The younger men are constantly tempted with flattering offers, both from law firms and business. Even the Government is paying better salaries than the smaller law schools, and in some instances has almost drained their faculties. Even when the universities recognize the problem, they are bound by their own rules not to allow salary differentials in favor of the professional schools.

The matter of the compensation of law school professors is of imme-

diate concern to the Bar. Unless prospects improve, no one can advise an able young lawyer, without independent fortune, to accept a teaching position. It is the responsibility of the Bar to assure greater financial independence to law teachers.

Methods of Assuring Financial Independence for Law Teachers

Perhaps the best way would be to provide special endowments for professional instructors. Another way would be cooperative effort to utilize services of professors as counsel in their specialties, so that their income could be increased by real fees and not the tips that they now receive for various kinds of hack work that takes up a disproportionate amount of their time.

One of the severest handicaps of the professor is that, unlike the practicing lawyer, he has no clerical or stenographic assistance except that which he provides himself. No compensation is paid for law review articles. The immediate cost of preparing a book manuscript may equal or exceed expected royalties. An active professor has a large volume of correspondence from other professors, practicing lawyers and former students. He is usually an inexpert typist. To the neglect of what he should be doing, he must spend hours of unprofitable effort at clerical tasks he does badly. One of the greatest needs of the law schools is a fund for clerical assistance to professors. The objective should be that each professor should have half the time of a competent stenographer.

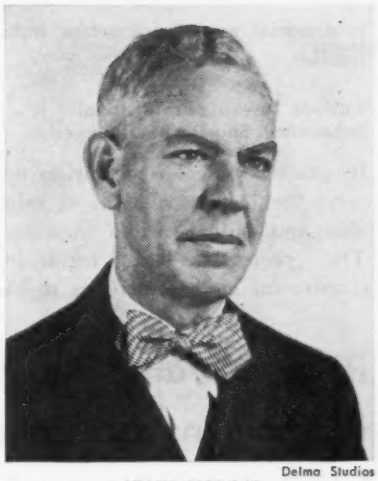
Independence of Law Teachers Is Rarely Endangered

Law school professors, on the whole, have had little cause to complain of outside or inside interference with their independence. Nevertheless, professorial tenure is still a matter of grace. Few professors have not occasionally been reminded that their appointments, while popularly regarded as permanent are at the pleasure of trustees or regents. In the past few years, I know of at least two able professors of long experience who have been forced out of universities on a simple issue of professional integrity. At my last information, neither had received a permanent appointment elsewhere.

University rules and practices make it exceedingly difficult for a middle-aged professor to make new connections. University authorities dislike to favor anyone who has displeased authorities in another institution. It is too easy to discredit a professor who has incurred the dislike of local interests. If he is a popular lecturer, he is called a shallow exhibitionist. If he is distinguished for research, he is out of touch with students. If he is conservative, he is called a reactionary. If he has espoused the cause of some oppressed minority, he is a radical. The Bar should no more condone pressure of special interests to undermine the position of a professor than it would permit similar interference with judicial integrity.

Refusal To Count Law Teaching as Law Practice or an Equivalent

A persistent disgrace to the Bar in its attitude to law teaching is the refusal of Bar admission authorities to count law teaching as law practice. Most law professors are immediately admitted to the Bar by examination after graduation in the State of their residence. Then they enter practice for a few years. They often are also



Delma Studios

JOHN HANNA

admitted to the Bar after examination in a new residence. Then they may have a succession of appointments until they reach the place in which they remain. In the meantime, they have become specialists. To qualify for a new examination would require a lot of useless effort which would interfere with their primary duties. If they should hazard the examination without preparation and fail, it could be an irreparable blow to their prestige.

The Bar examinations could not be passed offhand by any considerable percentage of the leading judges or practitioners. In most States a lawyer with a few years of the most trivial practice in another State can be admitted on motion to practice in his new residence. A professor with a national standing as a legal authority would be denied admission. When one considers that many of the leading lawyers of the nation have little or no courtroom practice and that their work corresponds largely with that of the professor, only the former is of lower quality, the attitude of judges and others towards

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Concerning the Author: John Hanna, a member of our Association since 1932, was born in Salem, Nebraska, in 1891. He was graduated *summa cum laude* from Dartmouth College in 1914 and received his law degree at Harvard Law School in 1918, in which year he began the practice of law in Washington, D. C. After serving as Special Assistant to the Attorney General of the United States in 1919, he practiced law at Auburn, Nebraska, until 1927. He has been special counsel to various governmental agencies and in 1942 was chief analyst of the Administrative Office of the United States Courts. Since 1931 he has been a Professor of Law at Columbia. As a member of the American Law Institute, he was its reporter on security (1936-41). He has written case books and magazine articles on legal and financial subjects. He is a member of the Bar in Massachusetts, Nebraska, the District of Columbia, and of the Bar of the Supreme Court of the United States.

professorial experience seems indefensible.

Attitude Towards Professional Experience Should Be Changed

Its practical effect is chiefly to deprive the Bar Associations of valuable and public-spirited members. The professor loses legitimate chances for modest increases to his income. The numbers involved are small. The danger to the Bar of the addition of unqualified members is non-existent. While law teaching ought to be regarded completely as the equivalent of practice, as an unfair alternative, professors and practitioners are certainly entitled not only to request but demand that the Bar direct its admission authorities to accept ten years of teaching in a school approved by the American Bar Association as equivalent to five years' practice for one who has once been admitted to practice after passing an examination.

Law professors are in fact members of the legal profession and their status should be so recognized by the Bar.

Research and Expertness in Legislative Draftsmanship To Preserve Federal System

■ Timely and significant is the report submitted recently to Acting President Fackenthal of Columbia University, as to the origin and principal activities of the Legislative Drafting Research Fund of Columbia, as an illustration of what experienced and well-grounded lawyers can do in aid of the legislative branch of government.

Organized in 1911, the first five years of the Fund's operations were in the nature of a test period, to determine the extent to which a university legislative office could in fact make a significant contribution to the public interest and to the life of the University. The first Director of the Fund was Thomas I. Parkinson, later Legislative Counsel to the United States Senate and now President of the Equitable Life Assurance Society. Supervisory authority of the Fund's activities was vested in a Board of Trustees consisting of Harlan F. Stone, later Chief Justice of the United States, John Bassett Moore, later Judge of the Permanent Court of International Justice, and Joseph P. Chamberlain, Professor of Public Law at Columbia University and Director of the Fund since 1919.

Established on a permanent basis in 1916, the activities have been carried into many federal and State fields, unobtrusively and without attendant publicity. Perhaps the most enduring single achievement is that the Office of the Legislative Counsel of the Congress of the United States came into being as the direct result of work done for Congressional committees by Middleton Beaman and other expert draftsmen of the Fund's staff. A former Legislative Counsel to the United States Senate has stated that "the establishment of the Office of the Legislative Counsel of the Congress is attributable to Columbia University's action in affording Congress a practical demonstration of legislative draftsmanship". Mr. Beaman was appointed as the first Legislative Counsel to the House of Representatives and has served with distinction in that post continuously since 1919. Mr. Parkinson was the first Legislative Counsel to the Senate; and three of the later Senate Legislative Counsel, Frederic P. Lee, Charles F. Boots, and Henry G. Wood, received their first training and experience in legislative matters as members of the Fund. Professor Chamberlain and Professor Noel T. Dowling played an active part in the discussions which led to the codification of federal statute law. The work done by Professor Dowling and other members of the Fund in the development of the doctrine of "Congressional consent to State action" has had a substantial influence on the course of federal legislation and constitutional law. To borrow Professor Dowling's words: "The work done under the auspices of the Fund has taught those engaged in it that sound legislation and the constitutionality thereof are dependent upon a thorough understanding of the facts with which the legislation is concerned and of the conditions which it is designed to create." Lately, Professor Harry W. Jones also has had a laboring oar in the work of the Fund.

A significant pronouncement in the recent report, as forecasting the kind of expert assistance which legislative activity needs in the present and future tense if the American federal constitutional system is to be preserved, is the following:

> Recent great expansions of the scope of government regulatory activities have created new and difficult problems of legislative technique and of law administration and enforcement. There is a marked tendency, particularly in federal regulatory legislation, away from the expression of legislative policy in specific and detailed statutory provisions and towards extreme statutory generalization and the delegation of unconfined administrative discretion. The increasing non-intervention policy of the Supreme Court in cases involving the constitutionality of government regulations of economic activities makes it more essential than ever before that Congress act with awareness of all the facts bearing on the long-range political and social consequences of its policy decisions. Congressional decisions with respect to the basis for working adjustment of federal and State powers will determine the future vitality of the American federal system. If the federal system is to survive as a way of government, Congress must work out the ways in which federal and State powers can best supplement and reenforce each other and must see to it that future extensions of national regulatory power are not so accomplished as to destroy State responsibility and initiative.

4

Federal Aid to Housing:

Association Takes Stand for Remedial Program

■ The House of Delegates on February 24 adopted without a dissenting voice or vote a series of resolutions by which the Association went on record as recognizing the human needs involved in the housing crisis and as favoring a housing policy based on active federal assistance to "the building of homes by private enterprise", so as to secure "substantial increase in the number of homes available for individual ownership or rental". Thereby the House of Delegates expressed its views as to the subject-matter of the controversy which has raged in the columns of the *Journal* since its December editorial (33 A.B.A.J. 1207; December, 1947; see also, 34 A.B.A.J. 89, 91 and 169; February, 1948).

The extension of "governmentally owned and operated housing" was opposed by the House, "except where urgently needed for very low-income groups in particular localities". Amendment and limitation of the Taft-Ellender-Wagner bill (S. 866) "so as to provide principally for private ownership or rental of the homes built" was favored. Cooperation of federal, State and local governments was favored, "for the clearance of slums and blighted areas so as to make such areas available for re-development by private enterprise".

■ When the calendar for the mid-year meeting of the House of Delegates was being prepared, it was found that a resolution adopted by the Section of Real Property, Probate and Trust Law in Cleveland, after two years of debate, had been available for action during the closing hours of the House sessions at the Annual Meeting last September, but had been referred to the Section of Municipal Law for its consideration, in view of the interest of the cities and their law officers in the subject.

The membership of the Section of Real Property is about 2809; of these some seventy-one are said to have been present when the vote was taken in Cleveland. By a vote reported as thirty-seven for and thirty-four against, those present adopted a resolution disapproving of those parts of the Taft-Ellender-Wagner bill (S. 866) as "provide for the federal Government extending its operations in the public housing field as particularly set forth in Titles VIII, IX and X of said bill". The Section's resolutions contained no affirmative or remedial recommendations for relief of the housing shortage, and did not approve any part of the pending bill or offer any constructive proposals in lieu of those condemned. The Section of Municipal Law recommended a resolution merely "That the House of Delegates not adopt the recommendation" of the Section of Real Property "to disapprove certain portions of S. 866". No affirmative program for housing was proposed. In view of the discussions in the JOURNAL and the Association, and the great urgency of remedial action by government and private industry, the Board of Governors did not like the wholly negative results of the consideration of the subject by the two Sections.

Elements of an Affirmative Program Are Formulated

Accordingly, the Board of Governors adopted and transmitted to the House, with a recommendation for its adoption, a resolution affirmatively for federal aid for privately-owned housing. Section Delegate Walter W. Land, of New York, of the Section of Real Property, Probate and Trust Law, and Corporation Counsel Walter J. Mattison, of Milwaukee, delegate of the Section of Municipal Law, made known their willingness to join with the Board of Governors in developing affirmative resolutions in support of legislation and action. Each wished for minor changes to clarify and strengthen the resolutions emanating from the Board of Governors.

These were worked out and agreed to; the two Section resolutions were not offered; and the following were submitted by William L. Ransom, of New York, to the House, with the support of the delegates of the two Sections and the Board of Governors, and were adopted by the House without a dissenting vote:

RESOLVED, That the American Bar Association, recognizing the great nation-wide need for substantial increase in the number of homes available for individual ownership or rental, urges that the Congress adopt a housing policy by which the federal Government will encourage and assist the building of homes by private enterprise so as to help make available a sufficient number of homes to meet the needs of our people at prices they can afford to pay.

RESOLVED FURTHER, That the Association opposes the extension of governmentally owned or operated housing except where urgently needed for very low-income groups in particular localities, and favors the amendment and limitation of the Taft-Ellender-Wagner bill (S. 866) or other housing legislation so as to provide principally for private ownership or rental of the homes built, with governmental assistance as to housing research and planning, and governmental efforts to reduce costs of building and materials.

RESOLVED FURTHER, That the Association favors a program for cooperation on the part of federal, State and local governments for the clearance of slums and blighted areas so as to make such areas available for redevelopment by private enterprise.

RESOLVED FURTHER, That such further housing legislation above favored shall be in addition to the laws and measures now in force under the Housing and Home Finance Administration for continued guarantees of mortgage loans in assistance to individual home ownership.

Rental Housing Probable Key To Relieving Shortage in Homes

From informal discussions had by your Editor-in-Chief with delegates from many parts of the country, the consensus appeared to be that the most acute shortage is generally of homes or dwelling units for rental as well as of individual homes for purchase at prices not palpably excessive. According to the Bureau of Labor Statistics, about nine per cent of American families are living "doubled up" at the present time; and the actual denials of the chance for individual families to have a separate and decent home and a suitable living environment amount to much more than that percentage. Thousands of lawyers, especially the younger men, are sufferers in this respect. Inadequate housing is regarded as one of the major factors in the breaking-down of family life in America since 1940.

A footnote in the recent opinion of the Supreme Court of the United States as to the constitutionality of rent control [*Woods* v. *The Cloyd W. Miller Co.*, 68 S. Ct. 421] gives the number of non-farm dwelling units built from 1941 to 1946, both inclusive, as 2,744,000. The 1947 study by the Bureau of the Census as to rental housing showed a decrease in the percentage of dwelling units available for rent in each of some thirty-four urban areas studied. Many units have been withdrawn from the rental market. The number of dwelling units occupied by no more than two persons is reported to have increased about 3,000,000 between 1940 and 1947; the effects on the availability of units for rental have been severe, during a period of laggard and insufficient construction of new units. With 1,000,000 to 1,500,000 new dwelling units urgently needed at the present time and annually for the next ten years, it is estimated that only about 820,000 of the first million, if constructed and available, would be absorbed by the market demand at current prices. High construction costs and the limitations on rentals seem to have combined to reduce sharply the dwelling units available for rental.

Status of Proposals for Public Construction of Dwelling Units

A long-range program for the clearance of slums and blighted areas, for their rebuilding by private enterprise wherever practicable, as favored by the House of Delegates, is not regarded as identifiable with "public housing" and should not be confused with it. Present public housing should be administered for the benefit of the low-income groups, and the House of Delegates was of the opinion that it should be extended only where urgently needed for them in particular localities.

A margin of controversial "public housing" is provided for in the Taft-Ellender-Wagner bill (S. 866) as it stands. Senator Taft has declined to eliminate it from the bill and has declared that he will fight for its retention. Senator Joseph R. McCarthy, of Wisconsin, Vice Chairman of the Joint Committee on Housing, has sponsored a bill which copies extensively from S. 866 but strikes out the "public housing" margin. The House of Delegates has gone on record for a limited resort to "the extension of governmentally owned and operated housing" and for amendment of S. 866 to "provide principally for private ownership or rental of the homes built".

Opinions of individual members of our Association will of course continue to vary according to the conditions in their home communities, their view of the severity of the shortage and the congestion, and their philosophy as to the use of some of proceeds of taxes for direct assistance to our own young people; but the House of Delegates aligned our Association on the side of an affirmative and remedial policy, rather than negation, controversy and continued delay.

The Congress Initiates Action Along the Recommended Lines

The action of the House of Delegates was brought to the attention, within a week, of members of the Joint Committee on Housing and other Senators and Congressmen concerned with legislation in that field. On March 13, the Joint Committee agreed unanimously on a legislative program which included many elements of our Association's recommendations: Federal loans up to a total of $1,000,000,000 over a five-year period for slum clearance plus grants of half that sum (with costs shared on a two-for-one basis) to cities for clearing and re-building blighted areas occupied by old tenements and the like; forty-year loans to veterans' cooperatives for building projects guaranteed up to 95 per cent by the Government at a rate of interest not exceeding four per cent; standardization of building codes to remove restrictive features; and yield insurance to protect investors in low-rental housing. The emphasis was

thus placed principally on the services of private enterprise.

By a divided vote, the Joint Committee included a margin of urban and rural public housing, where needed, as does the Taft-Ellender-Wagner bill (S. 866), to the extent of public construction of up to 500,000 low rental dwelling units over the next five years. The over-all effects of the recommended legislation, as reported to the Congress on March 15, is expected to be the encouragement of the construction of 1,250,000 to 1,500,000 dwelling units annually for the next five years, for private ownership by individuals and principally by private construction. S. 2317 (H. R. 5854, H. R. 5862) are regarded as strengthening but fulfilling the Taft-Ellender-Wagner bill.

5

Association Work as to International Law at Standstill for Lack of Funds

▪ After many years of actively advocating the establishment of international law as an aid to peace and the statement or codification of international law as a needed step to that end, our Association finds itself unable to take its expected part in that considerable task because the Association has not the funds to finance the work. In hailing the creation of the International Law Commission and urging the nomination and election to it of lawyers and jurists of the highest prestige and qualifications, the House of Delegates received also a report from its Committee for Peace and Law Through United Nations that the Association's work in aid of that project is substantially at a standstill because the necessary monies cannot be made available.

▪ The following resolutions offered by the Committee were unanimously adopted by the House:

RESOLVED, That the American Bar Association, expressing its gratification that the General Assembly of the United Nations has created, and will elect in 1948, an International Law Commission to further the progressive development and statement or codification of the rules and principles of international law, hereby urges upon the Government of the United States that the future of law and justice in the world requires that the nominations made by our Government and the votes cast by the representatives of our Government in the General Assembly shall wholly disregard partisan and political service and shall be for lawyers or jurists of the highest possible prestige, leadership and scholarly attainments in the field of international law.

Concerning the circumstances of the above resolution, the Committee report said, in part:

> The 18-member Committee created by the General Assembly to formulate a plan for accomplishing the progressive development and codification of international law made a report which is a land-mark of advance on the subject. Adopted by the General Assembly on last November 21, the text of the Resolution and the Statute of the International Law Commission were published in the January JOURNAL (pages 53-55).
>
> The original 1945 recommendation of our Association (31 A.B.A.J. 227-228), renewed to the State Department in May of 1947 (33 A.B.A.J. 728), for the nomination and election of the members of the Commission in the same manner as judges of the World Court are elected, was adopted in principle but varied somewhat. As the development of international law is made by the Charter a responsibility of the General Assembly, bi-cameral election was not favored by the Assembly. The Security Council as such will have no part in the election. Nominations will be made directly by Governments; each country may nominate four, of whom not more than two may be its own nationals. Nominations are to be made by June 1. Election will take place in the General Assembly, which meets in Europe in September.

Statement by the Committee as to Status of Its Work

As a matter of internal Association "housekeeping", the Committee's report advised the House:

> No appropriation has been made by the Budget Committee and the Board of Governors for any Regional Group Conferences as to international law or for organizing and carrying forward our Association's cooperation with the International Law Commission when its members are elected and with the important work being done meanwhile by the Legal Secretariat of the United Nations. The House voted unanimously last September for such cooperation and assistance. The Association has not thus far made funds available for any of those purposes.
>
> When the 1946-47 work as to international law was impending, the Carnegie Endowment for International Peace offered our Association $7,500 if our Association would "match" it. The Association could not do so—its dues had not then been raised. The necessary sum to make a start was then contributed by several individual members of our Association.
>
> With this it was possible to have prepared five basic documents on the Rights and Duties of States and to make complete plans for some thirty Regional Group Conferences in cities throughout the United States. As usual, the Carnegie Endowment put no "strings" on its grant-in-aid. The moneys were placed at the disposal of your Committee, up to such amount as the Association would "match"; the planning and direction of the work were wholly a function of the Association and your Committee.
>
> Seven Regional Group Conferences were held; they proved highly successful and gave an excellent start on "background". Judge Manley O. Hudson as Reporter to the Committee and Louis B. Sohn as Assistant Reporter attended these meetings. Illness forced Judge Hudson to discontinue the arduous traveling involved in attending. An eighth Conference that had been arranged at Jacksonville to coincide with a Regional Meeting of our Association was conducted by George A. Finch of our Committee, with Mr. Sohn.

The Carnegie Endowment offered $15,000 towards the continuance of the work, again provided that the sum was "matched" by the Association. Up to the time of this writing, the Association, although its dues have been increased and the work as to international law in 1947-48 was stated to be one of the purposes of the increase, has not felt able to make any appropriation for this purpose. Thereby our work as to international law was brought to a standstill.

In the opinion of your Committee, from the experience had in the 1944-45 work for the World Court and the Statute of the Court, it is highly desirable that at least a few more of such Regional Group Conferences be held, in the United States and Canada, if they can be financed, although Judge Hudson may not be available to conduct them. The Carnegie appropriation will lapse June 30 (unless extended), as to any part for which our Association has not raised the matching funds.

Financial Support for Work as to International Law Urged

The Committee's report on this subject concluded by saying:

In any event, it seems to your Committee to be of the utmost importance and urgency that our Association shall at the earliest possible moment make provision for the assistance which the House has repeatedly voted that our Association was ready and willing to give, through its Committees and Sections, in furtherance of the great task of developing progressively and stating the principles of international law. That is a prime responsibility of American lawyers. Within the past month, the Legal Secretariat of the United Nations asked for and was supplied with 200 copies of two of the basic documents prepared under your Committee's auspices for use in the Regional Group Conferences and our subsequent work. The Section of International and Comparative Law, and other Sections and Committees of our Association, have the competence and the man-power to render substantial service to this great project.

Judge Lumbard Makes a Categorical Denial of Statement Attributed to Him by Magazine

■ In the interesting aftermath of the publication by the *Woman's Home Companion* in its February issue of the article "Behind the Black Robes" and the full-page advertisement in the New York *Times* of January 16 of the same magazine (see 34 A.B.A.J. 175; February, 1948), came the following letter of Judge J. Edward Lumbard, Jr., to the New York *Law Journal*, published on February 24:

Editor of New York Law Journal:

While I was on vacation in Bermuda, from which I have just returned, an article appeared in the February issue of the *Woman's Home Companion* and an advertisement regarding the same in the New York *Times* on January 16. This article quoted me as saying:

"Only twenty-five percent of our judges are anywhere near capable. Some of them are less fit than the people they put in asylums."

I immediately cabled Presiding Justice Peck on January 20 as follows:

"I made no such statement nor is such a statement true. To circulate such a misstatement is a gross injustice to the great majority of judges in New York City and State who are capable and conscientious and who are rendering a real service to the people.

Mr. Whitman commits a disservice to the improvement of administration of justice by such misstatements, misquotations and muckraking."

Since returning to New York I have been assured by the editor of the *Woman's Home Companion* that a letter to the same effect as my cablegram would be printed in his earliest available columns.

While it must be apparent to anyone who knows me or has any familiarity with our courts that I could not have made any such absurd statement, I still wish to record through the medium of the *Law Journal* my categorical denial of the quotation and my resentment not merely so far as I am concerned but also of the reflection which is cast upon our judges.

By checking with others quoted in the article I find that they also have been misrepresented and that quotations attributed to them have been grossly distorted.

J. Edward Lumbard, Jr.

New York City.

General MacArthur Lauds American Bar as a Pillar of the Republic

■ From faraway Japan, General Douglas MacArthur, Supreme Commander for the Allied Powers in the Pacific Area, has written a notable tribute to the accomplishments of the American Bar, in peace and in war. In a letter dated February 7 to Roscoe P. Thoma, of Fairfield, Iowa, and the Iowa State Bar Association, General MacArthur said:

Through the years the American Bar has proved itself one of the great and indestructible pillars of our Republic and a strong bulwark to our free institutions. For in every crisis which has confronted us since the day of our Independence, invincible and determined leadership has sprung from its ranks. In peace it has provided us with exemplary leadership in seeking the way through political, economic and social storms which have arisen to harass our orderly progress and threaten to drive us from the course so long and so well charted, and in war its members have demonstrated unexcelled valor in the field and most skillful direction of those essential services without which victory in the field would be impossible.

Throughout my public service I have witnessed this great contribution of the Bar as a stabilizing force to American life, security, and progress. Furthermore, the notable part which your Association in the great State of Iowa has played in this vital American effort has commanded my deepest admiration.

6

Law and Courts in China:

Progress in the Administration of Justice

by **Roscoe Pound** • Adviser to the Ministry of Justice (China)

■ If lawyers, judges or Bar Associations in the United States feel at times that they have to contend against obstacles in their efforts to improve the administration of justice in our country, they should gain fresh resolves and new determination from reading Roscoe Pound's narration of what is taking place as to law and Courts and justice in the Republic of China and the conditions against which its government and people, and the jurists and juris-consults at work in their behalf, have had to contend. The battles for the institutions of freedom and for resisting the inroads of Communism are not being fought wholly on the terrain of the battlefields. Those who seek to strengthen the authority of law-governed Courts in China, develop a Chinese national system of legal education, and build an independent legal profession there, are in the front line of defense for the institutions of that country against totalitarian dominance. They justly feel that they are fortunate to have again so sagacious and understanding an adviser.

■ Development of a modern system of administering justice according to law has gone on in China under many difficulties. Under the old regime, a traditional body of ethical custom had been applied by magisterial discretion, which sought reconciliation of the parties to a controversy by bringing them to an amicable settlement. In 1905 the Imperial Government sent a commission to Europe to study plans of national reconstruction. Edicts followed, purporting to do away with the autocratic regime and promising constitutional monarchy. But there was no intention of a real change, and a general public demand for a new order led to a revolution which broke out in October of 1911 and culminated in proclamation of the Republic at Nanking on New Year's Day of 1912.

There was little on which to build a Constitution or a body of modern legal and political institutions. But in Dr. Sun Yat-Sen, the leader of the revolutionary movement and first president of the Republic, China found a wise, far-sighted, and constructive builder of a modern polity. His writings stand to Chinese constitutional law much as *The Federalist* has stood toward our own.

When the federal Constitution was drawn up in America, we had the great advantage of strong, well-established governments in each State, all but one of which had already adopted a Constitution on a common model going back to ideas of the Puritan Revolution and otherwise much in the fashion of the later Colonial Charters. Also, in the framing of our Constitution there were men of common training, learned in the history of English legal and political institutions, and possessed of practical experience of government under the Colonial Charters and the State Constitutions. If they were learned also in the writings of the Seventeenth and Eighteenth Century publicists, they had a background of practical political experience and of English legal and political writing on which to project it.

In China there was a good statement of certain fundamentals in the writings of Sun Yat-Sen, who appreciated the importance of building where possible on what was usable in Chinese tradition and institutions. But in the actual framing of the Chinese Constitution men well trained, some in England, some in France, some in the United States, some in Germany, and some in Japan, approached the problems of a Constitution with different ideas which were often far from reconcilable. The basis had to be comparative politics and comparative public law, not Chinese experience. Considering the difficulty of the task, the framers of the Chinese Constitution did their work wisely and well.

Slow Progress of Codification Produced Excellent Codes

Codification on modern lines in China had begun under the old regime. In 1904 the Imperial Government appointed a commission to draft a commercial code. In a few months the commission submitted to the Emperor a draft law on Traders,

in nine articles, and a draft law on Commercial Companies, in 131 articles. In 1906 a commission on codification was set up with a staff of law students trained in Japan, Europe, and America, and a Japanese adviser. This commission borrowed chiefly from Japan, which had drafted a civil code on the German model between 1893 and 1896. Japan had then succeeded notably in modernization; hundreds of Chinese students had gone to Japan to study law; and the Japanese had created a juristic vocabulary and produced a notable legal literature. Thus the Chinese could find near at hand in Japan the most advanced codification of the time, in a language they could readily master. The result was a draft civil code for China which followed closely the Japanese and consequently the German code.

After the proclamation of the Republic in 1912, this draft was felt to be inadequate, and a committee was set up to prepare a new draft. It was reorganized in 1916; in 1918 it was changed to a law codification commission. The work of that commission went on slowly; in 1928 five commissions took over the whole work of codification and legislation, and carried it on with much energy, so that the civil code was complete in 1930 to take effect in 1931, the code of civil procedure in 1931 to take effect in 1932 but revised and promulgated in 1935, the criminal code in 1935, and the organic law of the judiciary in the same year.

These codes, especially the civil code, were very well done. Twentieth-century codes follow the lines of the German Civil Code which took effect in 1900 and was the result of twenty-three years of careful preparation. This code was further developed in the Swiss Civil Code which took effect in 1912. The Chinese Civil Code was chiefly influenced by the Swiss, which thus far is the high-water mark of Continental codification. But the Chinese Civil Code made some notable improvements, especially in incorporating commercial law, doing away with an artificial historical separation in Continental law, and some borrowings from Anglo-American law. The Chinese Code of Civil Procedure also is very well done. The Chinese codes will rank easily with the best examples of modern legislation.

Organization, Structure and Powers of the Judiciary

Legislation as to organization of the judiciary goes back to the last years of the Empire, when in 1907 a Law of Organization of the Supreme Court was promulgated, providing for a Supreme Court, High Court, District Courts and Local Court of Peking, the Imperial Capital. This was followed in 1908 by the Provisional Regulations Relating to Courts and in 1910 by the Law of Organization of Courts. This remained in force under the Republic until in 1932 it was superseded by the Organic Law of the Judiciary, which took effect in 1935. The latter has been revised more than once and has been supplemented by later legislation.

Under the Constitution the "highest judicial organ" is the Judicial Yuan, with general jurisdiction over civil, criminal, and administrative cases and matters of disciplinary punishment of Government officers. It is one of the five co-ordinate departments of the government. It is the interpreter of the Constitution, and the "Grand Justices" are entrusted with enforcement of the provisions that laws and ordinances in conflict with the Constitution are "null and void". The organization in a Supreme Court, Provincial High Courts, District Courts, and Local Courts, in the main follows Continental lines. The draft Constitution, on which the Constitution adopted in December, 1946, to take effect a year later is based, was complete in 1936.

Remarkable Achievements of the Republic Under Many Difficulties

Thus in twenty-four years from the overthrow of the Empire and setting up of the Republic, the work of providing a modern Constitution, modern codes, and a modern organization of Courts was done, and well done. This would have been a remarkable achievement in any case, seeing that it had to be done with little to build on, by study of foreign institutions and laws and adaptation of new ideas to an old country in a time of profound changes, even if there had been propitious conditions of peace and stability. To do it under the actual conditions is an achievement without parallel.

The Republic had not much more than been set up when formidable attempts were made to restore the autocratic Imperial regime. One in 1915-1916 sought to found a new dynasty. Another in 1917 sought to restore the Manchus. After these had been put down, there followed a decade of internal warfare as military provincial governors sought to set up local independent autocracies. In the end a strong central Government was established, but only to meet with persistent aggression by Japan. This led to occupation of three eastern provinces, to the setting up of a puppet state in Manchuria, to compelling the withdrawal of Chinese national forces from the territory between the Great Wall and the Peiping area, to attempt to detach five northern provinces, and to setting up of an "autonomous" regime in other provinces.

Japanese Invasion and Communist Rebellion Have Been Obstacles

In spite of this the process of unification and development of a strong central government had gone on under the able and vigorous leadership of Chiang Kai-shek, when in 1937 Japan began an offensive which compelled removal of the seat of government to Chungking and brought about hostile occupation of the greater and more important part of the country. The system of transportation and communication was disrupted. The administrative systems, the system of administering justice, and the system of education, were disorganized; eight years of warfare on Chinese soil ensued. It was not until midsummer of 1946 that the Government was fully re-established in Nanking. The puppet

regimes set up by the Japanese were not fully put an end to until the last of 1945. A long process of reconstruction of administration, Courts, education, finance, transportation, and industry, as well as of general rebuilding and repairing the destruction wrought by war and enemy occupation, was now required. But Communist rebellion, fomented and promoted from the outside, followed, and has had to absorb much of the energy and resources of the Government.

Steady Progress in Responsible Government Has Been Achieved

Notwithstanding this, steady progress has been made. The Constitution, held in abeyance for eight years during which the National Assembly could not be brought together, has been adopted. A general election, the first in Chinese history, has been held. The machinery of government has been working with increasing regularity and precision. Restoration of the judicial machinery over the occupied area has been quickly and effectually achieved. The Ministry of Justice had kept up the work of planning development of law and its administration and keeping the organization of justice functioning during the hard years at Chungking. The Ministry of Education, realizing the great importance of legal education, did a great work in keeping it in operation and proceeding with measures of improvement during eight years of war at its very doors.

During the war the educational system was disrupted. Legal education suffered especially. Over eighty institutions of higher learning had to evacuate to unoccupied regions, having to move seven or eight times, often great distances on foot, as the Japanese continued to advance. The Government was confronted with a herculean task of housing and feeding hundreds of thousands of refugee students and teachers and maintaining standards of education. Since the end of the war the restoration of legal education by the Ministry of Education has gone forward rapidly and well.

Much Remains To Be Done to Overcome Problems of Different Systems and Techniques

Yet much remains to be done. Codes, however well drawn, do not interpret and apply themselves. They require a technique of interpretation and application which results from a taught tradition. The significant modern codes have each had behind them a long development of writing and teaching. They have been framed from materials well known by reason of a common teaching to those who drafted them. They have been the culmination of a continuous growth for centuries. On the other hand, the Chinese codes have been the work of jurists of diverse training, working on materials which have grown up in other lands, taken sometimes from systems with different techniques of development, interpretation and application. Some of the most difficult problems of Chinese law at the moment arise from incorporation of borrowings from Anglo-American law in essentially Continental codes and of American constitutional provisions in a Constitution which is largely on Continental lines and will be interpreted and applied by lawyers with a Continental training.

Chinese law teachers and writers will have a real task in finding how to adapt such provisions to their surroundings and fit the technique of applying them to that of applying other parts of the same instrument. This would not be easy if all those who interpret and apply, and all the teachers of those who interpret and apply, had had a common training in a uniform system. But they have not. China has many well-trained, learned, able jurists, some of them of world-wide repute. As a class, however, there has been little in the way of uniform or unified training. Of judges and law teachers, most have been trained in the law of Continental Europe, some in France primarily on the basis of the French Civil Code, some in Germany on the basis of the German Civil Code, many in Japan, where there was a very good law school before the war, on the basis of the Japanese version of the German Civil Code. But some have been trained in Anglo-American law, some in English universities, some at the Inns of Court, and some in the United States, getting a primarily English or primarily American view of the common-law system. Those trained in China have been taught by teachers with a corresponding variety of training. It is evident that a unified doctrinal and judicial development of the codes must be greatly retarded under such circumstances.

Five-Part Program to Improve the Administration of Justice

Accordingly, I have recommended to the Ministry of Justice a program with five parts:

First: I put surveys of the administration of justice in certain typical cities and provinces, in which to discover and point out the difficulties under which the Courts are operating and the way to meet them, to discover the source of abuses, if any, and find ways of obviating them; to ascertain the deficiencies of organization and equipment under which the judges are working, the facilities they need in order to carry on their work effectively, the deficiencies in the law they have to apply, the deficiencies in the training of those who practice in the Courts, and the specific problems with which the Courts are confronted. The first of these surveys is about to begin.

Second: The program calls for conferences, conducted both locally and nationally, directed to what works well in judicial administration and what not, to what is used in practice and what not and why, to gaps in the law, and to matters which need the attention of the Ministry or need legislation, seeking to treat concrete situations rather than to work out abstract solutions for hypothetical situations in other parts of the world, or to canvass abstract legal institutions in other parts of the world with reference to some abstract country.

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Law and Courts in China

Third: I am recommending an organization similar to the American Law Institute, a cooperative undertaking of officials, judges, law teachers, and practicing lawyers, to bring out a series of Institutes of Chinese Law, a unified series of books to furnish the needed doctrinal writing to aid in interpretation and application of the codes and their development by judicial decision.

Fourth: As the work proceeds I plan a thorough survey of and report on legal education.

Fifth: I hope for a final report on the organization of the legal profession and on recommendations for putting it on a sound basis while it is still in a measure formative.

But the first three items have the right of way.

7

Charles Elmore Cropley Completes 40 Years of Service with the Supreme Court

■ In a gracious, informal ceremony in the Supreme Court Building in Washington on February 18, Charles Elmore Cropley, Clerk of that Court, received the hearty felicitations of the Justices and his associates in the staffs of the Court for his forty years of service with the Court. His record was recounted as unique. He has served under six of the thirteen Chief Justices in the long history of the Court. During his service, thirty Associate Justices have sat on the high bench, out of the total of seventy-three in the Court's annals, not including those subsequently promoted to be Chief Justice. During those forty years, some 31,814 cases have been docketed on the Court's appellate docket, as compared with the total of 52,837 docketed since the Court came into being.

The justly popular Clerk entered the Court's services as a page at the age of thirteen, when the Honorable Melville W. Fuller was Chief Justice and Oliver Wendell Holmes, Jr., had been an Associate Justice for about six years. Later Mr. Cropley became an assistant in the Clerk's office. Next June he will have served twenty-one years as Clerk. He is the tenth to hold the office of Clerk since the establishment of the Court 158 years ago.

CHARLES ELMORE CROPLEY

In presenting Mr. Cropley with a gift in behalf of the staff of the Clerk's office, Chief Justice Vinson called him "the number one Clerk which the Court has ever had". He stressed Mr. Cropley's devotion to duty, his efficiency, and above all, his courteous treatment of lawyers who have business with the Court. The Chief Justice referred also to Mr. Cropley's still youthful appearance and said that he must have been a very precocious child, as it was evident he had begun work for the Court as soon as he was out of his cradle.

Presenting Clerk Cropley a gift in behalf of the Marshal's office and his own staff, Mr. Justice Jackson referred to the friendly contest in "dignity and sartorial splendor" between the Clerk on the right side of the bench and the Marshal on the left, and added by way of *dictum* without dissenting or separate "concurring" (?) opinion that it must remain a moot question as to whether the Clerk is the more impressive in swearing-in attorney-applicants for admission to the Bar of the Court or the Court Crier in "praying the United States be saved from this honorable Court". Justice Jackson feelingly attested the universal affection of the members of the Court as well as of the Bar for Clerk Cropley, and wished him many more years of service. Miss Helen Newman, Librarian of the Court, extended the congratulations of members of the library staff, and presented to Mr. Cropley a gift from them to commemorate the occasion.

In responding Mr. Cropley said he felt "quite as timid and frightened at this ceremony as I was forty years ago when I first assumed the duties of a page in the old Supreme Court Chamber in the Capitol". He expressed appreciation for the many expressions of friendship, and said that many of his happiest memories shall ever be in connection with his work for the Court.

The privilege of serving the Court and the Bar over a long span of years is shared by Mr. Cropley's nine assistants. Their terms in office range from eighteen to thirty-seven years and average twenty-three years. Indeed, both he and they are a vital part of the continuity typified by the nation's foremost judicial institution. A host of members of the Bar throughout America will wish earnestly that they could have taken part in this most appropriate commemoration of long and distinguished service, for which many lawyers have been unceasingly grateful from the time they first stepped timidly and hesitantly into the office of the Clerk of this great Court.

8

Covenant on Human Rights:

House Acts as to Measures for Implementation

■ At its meeting in Chicago on February 23-24, the House of Delegates considered the Draft Covenant on Human Rights, the Draft Declaration, and main features of the tentatively proposed Measures for Implementation (see our March issue, page 200). The House did not at that time take action on the Draft Covenant and Declaration as such, but voted its considered views as to several proposals for implementing the Covenant, which will be embodied in the Covenant if such measures are finally approved and the Covenant is submitted for ratification by the Senate or approval by the Congress of the United States. The House also set up machinery by which the views of individual members of our Association, and of State and local Bar Associations, concerning the draft documents, will be received, analyzed, and made available to the State Department and the United States Delegation to the United Nations. This procedure was announced in our March issue (page 200) and is amplified in an editorial in this issue.

The House of Delegates voted opposition to the creation of a new and separate International Court of Human Rights, favored the limitation of the right of complaint of violations to states which have adhered to the Covenant, opposed the creation of a permanent committee to receive and deal with complaints of violations of the Covenant, opposed the giving of a right to "individuals, associations or groups" to complain or bring charges of violations before the United Nations (against their own country or another state), and offered some suggestions for consideration as to procedure, etc. Present action was not taken on the questions as between a Covenant and a Declaration or as to the contents of either Draft.

The Government of the United States is to make its reply and take its stand on the Drafts, etc., not later than April 3. A Conference was conducted by the State Department on March 4 to elicit the views of accredited non-governmental organizations. Our Association was represented at the Conference, and the actions voted by the House of Delegates were submitted. Expressing the wish of our Association to be helpful on the subject in every practicable way and especially in ascertaining and placing before the State Department the considered views of lawyers in all parts of the United States, the representatives of our Association pointed out strongly to the Department that the time allowed for such a democratic process, before our Government takes its stand on the Draft, is utterly inadequate. Our Association's Committee has since been assured that views expressed and suggestions made by American lawyers will be considered by the State Department and the United States representatives, if received during April or early May.

■ The actions voted by the House of Delegates after debate on February 21 were taken upon the recommendations of the Association's Committee for Peace and Law Through United Nations. Before the report and recommendations of the Committee were presented, Vice-Chairman Frederic M. Miller, who had signed its report and is also Chairman of the Section of International and Comparative Law, placed before the House the reasons why the Section's Council opposed the adoption of the first three resolutions recommended by the Committee.

Chairman William L. Ransom of the Committee then placed its report before the House and offered the following four resolutions related to the Draft Covenant and Declaration and proposed Measures for Implementation, the same having been approved by the Board of Governors.

International Court of Justice Championed by the Committee

In presenting the report, Chairman Ransom stated that the recommendations substantially supported what he understood had been the original position of the United States Government in the Commission on Human Rights, and that even on final submission the United States had reserved its position as to the Court. "The proposal to create a new and separate International Court of Human Rights to have jurisdiction of disputes arising from unsettled complaints or charges against a state, by another state or states or by 'individuals, associations or groups' for claimed violations of the Covenant on Human Rights, is regarded most unfavorably by your Committee," said the report, which continued:

> The Charter of the United Nations and the Statute of the Court created the International Court of Justice,

which was strongly urged and has been staunchly supported by our Association. Although its members were elected nearly two years ago and the Court has been ready to function, only one case has been brought before it. No occasion has arisen, in the opinion of your Committee, for creating now an additional and coordinate Court, in this special field. Our Association should, we think, urge that the American Government should adhere to and maintain its stand in opposition to the proposed additional Court.

Beyond that, we do not believe that the interests of world peace and amity would be served by erecting now a specialized Court to have jurisdiction in a provocative and controversial class of disputes, arising out of complaints and charges made by a state or by "individuals, associations or groups" within a state, against their state or against another state. Impartiality in the hearing and determination of such disputes, if they are to be authorized and heard at all, would be secured far better by leaving them to the Court of general jurisdiction, made up of jurists chosen for their broad qualifications and experience, than by putting such disputes in the hands of a special Court made up of men who might be chosen, at the demand of "pressure groups" or combinations of trouble-making states, for the very reason that the judges so chosen would be pre-disposed to such complaints and charges.

We likewise do not favor the creation at this time of a permanent committee or body to receive from "individuals, associations or groups" complaints or charges of violations of the Covenant, investigate them in whatever country they are claimed to have taken place, adjust them if possible, or initiate the steps to bring the dispute before the Court.

"A Pandora's box of international friction and provocations through United Nation's intervention in the internal policies and laws of member states might be opened by the adoption of these correlated proposals," declared the Committee, which added that:

> The right to bring complaints or charges of violations of any Covenant on Human Rights should be limited to states, and to states which have themselves ratified the Covenant or Convention. Otherwise, a state not party to the Covenant will be able to complain of violations in or by other states, while the latter would have no right to bring any reciprocal complaints. In this respect also, our submitted Resolutions are in support of the stand reported as taken by the representatives of our Government.

Text of the Resolutions Offered by the Committee

RESOLVED, That the American Bar Association opposes the proposal to create an International Court of Human Rights, and urges that the Government of the United States adhere to and maintain its stand in favor of the International Court of Justice and in opposition to a new and separate Court on that subject.

RESOLVED FURTHER, That the American Bar Association opposes the proposal to create at this time a standing Committee under the auspices of the United Nations Economic and Social Council or its Commission on Human Rights, with powers and duties of receiving, investigating, and endeavoring to adjust or settle, such complaints or charges as are brought to it, by a state or by individuals, associations or groups, that violations of human rights have been committed by or within a state, with procedure whereby any such complaints or charges so made and not adjusted may be carried before an International Court as a dispute.

RESOLVED FURTHER, That the American Bar Association especially opposes the establishment of procedures whereby individuals, associations or groups may bring complaints or charges of violations of a Convention or Covenant on Human Rights, before any Council, Commission or subordinate agency of the United Nations; and urges that the right to bring such a complaint or charge, against a state or otherwise, be possessed only by such other states as have themselves become bound by the Covenant alleged to have been violated, and that in case of a difference of opinion with respect to the interpretation or application of the Covenant by a state or group of states or any other question arising under the Covenant, the General Assembly, or the Economic and Social Council if so authorized by the General Assembly or the Interim Committee, be empowered to request the International Court of Justice for an advisory opinion on the subject, such opinion to be binding on those states which have agreed thereto in advance by signing a special protocol attached to the Covenant.

RESOLVED FURTHER, That the American Bar Association authorizes its Committee for Peace and Law Through United Nations to study further the Draft Covenant on Human Rights and the Draft Declaration on Human Rights, recently transmitted to the Members of the United Nations, as well as the present or future drafts of Measures for Implementation, and to submit to the State Department of the United States and the United States Delegation such views or suggestions as may be received from members of the Association or formulated by the Committee or by Sections or other Committees of the Association, such submissions to be first approved by the Board of Governors or an authorized sub-committee thereof.

Section of International Law Opposes Adoption of Resolutions

For the Council of the Section, Lyman Tondel, Jr., of New York, asked several clarifying questions and argued against present adoption of the first three resolutions. W. B. Cowles, Jr., Delegate of the Section, argued along the same lines and moved to table the three resolutions. This was voted down by the House.

George M. Morris, of the District of Columbia, urged that the House should not take a negative stand of opposition to pending proposals. He moved that the fourth resolution be adopted and that the first three resolutions be rejected.

The Resolutions Are Adopted as Submitted

In closing the debate, Chairman Ransom asked that the House vote its stand on the first three as instructions to the Association's representatives in the State Department Conference called for March 4.

The House thereupon defeated Mr. Morris' substitute and passed each of the four resolutions as submitted. The report and recommendations were prepared as submitted by a Committee consisting of William L. Ransom, of New York City, Chairman; Frederic M. Miller, of Des Moines, Iowa, Vice-Chairman; George A. Finch, of Washington, D. C.; Frank E. Holman, of Seattle, Washington; Orie L. Phillips, of Denver, Colorado; Carl B. Rix, of Milwaukee, Wisconsin; M. C. Sloss, of San Francisco, California; Reginald Heber Smith, of Boston, Massachusetts; Charles W. Tillett, of Char-

lotte, North Carolina; and Tappan Gregory, of Chicago, Illinois, President and *ex officio*.

At the Conference of organizations convened by the State Department on March 4 our Association was represented by Walter M. Bastian and William L. Ransom, who were appointed for that purpose by President Gregory. Further developments are discussed in an editorial in this issue.

9

Association Urges S. 1988 for State Titles to Tidelands

▪ The decision of the Supreme Court in the Tidelands case (332 U. S. 19; 67 Sup. Ct. 1658) was considered by the House of Delegates on February 23; and resolutions were adopted by a decisive vote which approved and urged the enactment of S. 1988, offered by Senator Moore of Oklahoma and nineteen other Senators representative of both political parties and all parts of the country, "To confirm and establish the titles of the States to lands and resources in and beneath navigable waters within State boundaries and to provide for the use and control of said lands and resources".

▪ The need for legislative action had been debated in the Assembly in Cleveland last September (33 A. B. A.J. 1239; December, 1947), upon a Resolution by John D. McCall, of Texas. The Assembly adopted a recommendation by Chairman Roy A. Bronson for the Resolutions Committee that the subject be referred to a committee for study and report to the House of Delegates. The latter concurred and made the reference to the Board of Governors, which created a special committee headed by James L. Shepherd, Jr., of Texas. This committee recommended that the Association approve S. 1988, oppose any compromise, and actively support the pending bill, with adoption of the following:

That the House of Delegates of the American Bar Association approves and urges the adoption of S. 1988 offered in the Senate of the United States, on January 16, 1948, at the Second Session of the Eightieth Congress, entitled "A Bill to confirm and establish the titles of the States to lands and resources in and beneath navigable waters within State boundaries and to provide for the use and control of said lands and resources"; and that copies of this resolution be sent to the appropriate committees of the Senate and House of Representatives, to other members of Congress, and to the President of the United States.

That the House of Delegates of the American Bar Association in approving and urging the adoption of S. 1988 is opposed to any compromise or amended measure which may be offered which would have the effect of quitclaiming or relinquishing everything within the three-mile offshore belt, except the minerals therein; and that copies of this resolution be sent to the appropriate committees of the Senate and House of Representatives, to other members of Congress and to the President of the United States.

That the President of the Association, or someone designated by him, is hereby authorized to appear before, or to submit a statement to, the appropriate committees of Congress in support of S. 1988, and in opposition to amendments thereto or to other bills which may be introduced in Congress to accomplish the compromise referred to in the second resolution in this report.

Mr. Shepherd made a comprehensive, factual and decisional statement to the House in support of the declaration of S. 1988 "that the several States, and the others as hereinafter mentioned, since July 4, 1776, or since their formation and admission to the Union, have exercised full powers of ownership of all lands beneath navigable waters within their respective boundaries and all natural resources within such lands and waters, and full control of said natural resources, with the full acquiescence and approval of the United States and in accordance with many decisions of the Supreme Court and of the Executive departments of the federal Government that such lands and resources were vested in the respective States as an incident to State sovereignty and that the exercise of such powers of ownership and control has not in the past and will not impair or interfere with the exercise by the federal Government of its constitutional powers in relation to said lands and navigable waters and to the control and regulation of commerce, navigation, national defense, and international relations". (Section 1 (a) of S.1988).

Inasmuch as the recent decision of the Supreme Court held that "the federal Government has certain paramount powers with respect to a portion of said lands without reaffirming or settling the ultimate question of ownership of such lands and resources", but the decision "recognizes that the question of the ownership and control of said lands and natural

JAMES L. SHEPHERD, JR.

9 State Titles to Tidelands

resources, is within the 'Congressional area of national power' and that Congress will not execute its powers 'in such way as to bring about injustices to States, their subdivisions, or persons acting pursuant to their permission' ", Mr. Shepherd urged that S. 1988 be enacted.

Robert W. Upton, of New Hampshire, opposed the resolutions. State Delegate Charles S. Rhyne, of the District of Columbia, pointed out that only fifteen square miles of the tidelands along the California coast are known to have oil underneath and that of the $16,000,000 of annual revenue therefrom about $12,000,000 goes to the City of Long Beach and $4,000,000 to the State of California. Delger Trowbridge, of that State, declared that the decision put in question the ownership of the filled-in land on which a considerable part of the City of San Francisco had been built. Corporation Counsel Walter J. Mattison, of Wisconsin, delegate of the Section of Municipal Law, supported the resolutions in order to clear and confirm the title of the City of Milwaukee and other cities on the Great Lakes to many hundreds of acres granted to them by their States and developed through the expenditure of many millions of dollars. State Delegate LeDoux R. Provosty, of Louisiana, said that the decision put in doubt the titles of a large part of the State of Louisiana. The vote of the House was emphatically in support of the confirmation of State titles through enactment of S. 1988.

10

Lawyers May Offer Suggestions for Changes in Rules of U.S. Court of Claims

■ Chief Justice Marion Jones of the Court of Claims has announced that the Court has initiated a critical study of the Rules under which it has been operating, for the purpose of determining whether changes should be made to facilitate the business of the Court and assist those who practice before it. The present Rules were adopted first in 1855. While many changes have been made in them, they have not been amended in an important respect since the 1938 adoption of the Federal Rules of Civil Procedure. The Court feels that a comprehensive study of its Rules in entirety may advantageously be made. Commissioners Akers and Cowen have been appointed by the Chief Justice to conduct the study; the suggestions and recommendations of the Department of Justice and of all interested members of the Bar are solicited.

The Commissioners have divided the Rules into groups for the study. The first group or division to be considered relates to Pleading and Motions (Rules No. 8 to 27). It is asked that any recommendations be made specific textually, in the form of proposed Rules, and be accompanied by explanatory matter which makes clear the underlying reasons for the suggested change. A proposal for the revision of any present Rule, or for the adoption of any Rule, may be made at any time while the study is in progress on a particular section. The study will extend over a period of at least several weeks.

After a full consideration of all suggestions received from the Bar and the Department of Justice, the Commissioners propose to prepare preliminary drafts of the Rules by groups. These will then be submitted to representatives of the Bar and the Department of Justice for criticism and further suggestions, before the final draft is prepared and submitted to the Court.

The American Bar Association by resolution passed by the House of Delegates in 1945 (A.B.A. Reports, Vol. 70, page 135), upon the advice of the Section of Patent, Trade-Mark and Copyright Law, recommended that the Rules of the Court of Claims should include, so far as would not be inconsistent with Sections 762 and 765 (of Title 28 of the Judicial Code), the Federal Rules of Civil Procedure. In drafting suggestions as to the Rules, it should also be kept in mind that our Association, by resolution also adopted in 1945 (A.B.A. Reports, Vol. 70, page 281), took the position that the Commissioner system of the Court of Claims should be maintained and further developed, through existing statutes rather than by fundamental changes.

All members of our Association who practice before the Court of Claims or are otherwise interested in revision of its Rules are urged to transmit any suggestions they may wish to make to Robert C. Watson, Chairman of our Association's Committee on the Court of Claims, 815 Fifteenth Street, N. W., Washington, D. C. The Committee has already transmitted to the Commissioners several suggestions for the revision of the Rules relating to Pleadings and Motions.

Communists in U. S.:

"Registration" Urged by House of Delegates

■ The spread of Communism in our country was scathingly denounced in resolutions adopted by the House of Delegates on February 24, on the recommendation of a Committee headed by Robert R. Milam, of Florida. Compulsory "registration" of Communists and Communist organizations was favored, with "merciless publicity", relentless prosecution of "all seditious and subversive acts", and education as "the one effective safeguard" against Communism. At the same time, the resolutions insisted that the full protection of the Bill of Rights and other traditional American rights be accorded to Communists. The House was manifestly in a mood to go as far as it could in approving considered proposals for legislation against Communism, but a difference of opinion arose as to what could best be done in advance of the submission of the definitive legislation then under consideration by the Nixon Sub-committee of the House of Representatives Committee on Un-American Activities.

■ Our Association's Committee on the Bill of Rights offered resolutions which embodied the gist of the statement made unofficially by its Chairman, Robert R. Milam, before the Nixon Sub-committee in Washington on February 5, as reported in our March issue (34 A.B.A.J. 193). The proposals of the Committee were as follows:

WHEREAS, Communism as it actually operates is an international conspiracy teaching loyalty to Russia and treachery to this Nation; its purpose is to disrupt, disable and finally destroy the American way of life; it operates as an agency of a foreign power actively seeking to weaken and then destroy democratic government everywhere; it infiltrates its members into labor unions and key industries so that in time of peace they can foment strife and industrial dislocation and in time of war they can sabotage, disrupt and spread confusion, all in the interest and at the direction of a foreign power; and

WHEREAS, the individual Communist has no loyalty to this Nation but yields his allegiance to an alien group whose bidding he does without question, and whose aim is to eventually establish an implacable dictatorship in all countries; and

WHEREAS, in those countries where Communism has gained control, civil rights, as we know them, have ceased to exist, and those who defended such rights have been imprisoned or liquidated; and Communistic activity in the United States threatens the civil rights of all citizens;

NOW, THEREFORE, BE IT RESOLVED that the American Bar Association records itself as vigorously opposed to the spread of Communism in the United States and advocates the fullest publicity on its aims and activities, and prosecution for offenses committed;

BE IT FURTHER RESOLVED that, while insisting

(a) that the full protection of the Bill of Rights be accorded to the members of any minority group, including Communists; and

(b) that neither prejudice nor well-founded indignation can justify the infringement of any right secured by the Constitution; and

(c) that the right to advocate improvements and changes in our form of government by legal and peaceful means must be protected;

Nevertheless, subversive and treasonable tactics must be effectively met, and to that end it is recommended

(1) that all subversive and seditious acts as defined by law should be relentlessly prosecuted;

(2) that Communists and Communist organizations should be compelled to register, giving complete information as to their activity, purposes, financing, source of funds, officers, affiliations, membership and like matters;

(3) that such information should be available to the public and to the press for publicizing;

(4) that offenders should be prosecuted if they fail to register or register falsely;

(5) that Communists and those practicing its teachings should be barred from all government service, State and federal;

(6) that candidates pandering to the Communist vote should be branded by publicity mediums for so doing;

(7) that education on this threat is the one effective safeguard against it and an informed public opinion is the best assurance against any assault on our form of government, and for that reason, that the whole power of the federal Government should be directed to uncovering the activities of Communists and similar organizations in order that merciless publicity may be given their activities and that the public may become fully informed.

When the foregoing came before the Board of Governors, a majority of its members were of the opinion that inasmuch as numerous distinguished lawyers, including members

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When the foregoing came before the Board of Governors, a majority of its members were of the opinion that inasmuch as numerous distinguished lawyers, including members

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ROBERT R. MILAM

of our Association and other Bar Associations, had appeared before the Nixon Sub-committee and had offered various differing suggestions for protective legislation against the menace of Communism, the House of Delegates was hardly in a position to take effective action on the subject until the definitive legislation could be considered. In particular, the advisability of a present declaration in favor of compelling the "registration" of "Communists and Communist organizations" was doubted, in the absence of a specific bill from which the probable effects of such a measure on other political activity and "public opinion" organizations could be determined.

Accordingly, the Board of Governors proposed that the action on February 24 be stated to be that recommended "at that time"; that items (2), (3) and (4) be omitted from the present action; that (7) be modified to describe education as "*an* effective safeguard"; and to ask that powers of the "federal *and State* governments" be directed against Communism, and that the following be added to the Milam resolutions:

> That further action for the Association by the House of Delegates or the Board of Governors as to other remedial measures that may be found to be needed to implement the foregoing be deferred until definite legislation is formulated in the Congress of the United States or in the legislatures of the several States.
>
> That the aid of the appropriate Committees of the American Bar Association be tendered to the Committee on Un-American Activities of the House of Representatives in the development of appropriate legislation to accomplish the foregoing purposes.

The House Adopts the Original Resolutions

From the debate, the House seemed to gain an impression that the substitute for the Milam proposals would have the effect of weakening them, whereas the intention of the Board of Governors had been mainly to make it clear that the present action was no more than interlocutory and that further proposals would be developed and acted on as soon as practicable. With the shadows of tragic events in Czechoslovakia first beginning to appear, the House was in no mood to stop short of whatever it could then support and urge as measures against Communism in the United States. The striking-out of the three paragraphs from the Milam proposals was rejected; the two paragraphs which the Board of Governors proposed to add were lost sight of; and the Committee resolutions were adopted as submitted.

The report submitted by the Committee said, as to "the contempt proceedings against certain moving picture directors and writers arising from their refusal to answer whether or not they were Communists", that "The opinion of the Committee was strongly to the effect that these persons were quite adequately represented and moreover, as it was not a crime to belong to the Communist Party, they should be compelled to answer as to whether or not they were members".

Committee Reports as to "Loyalty Test" for Federal Employees

As to the "loyalty test" for federal employees, the Committee reported that it had kept "a close check" on this matter and was of the opinion that

> The only cases where it appeared a manifest injustice had been done were then being handled before the Bureau involved and by most able counsel. The Committee decided to withhold volunteering any recommendations until the Government had formulated its regulations and established its policies with respect to administering the loyalty test. This was shortly done by the regulations for the Loyalty Review Board. The Board was chosen from thoroughly representative citizens of broad experience and the chairman is a man of peculiar ability to administer the policies. Not only was it provided that, unless security reasons compelled otherwise, one accused of disloyalty would be served with specific charges and would be confronted by witnesses; but when these things were not done, the reviewing authority was required to consider, to the advantage of the defendant, that he was denied these privileges. Inasmuch as this is not a criminal proceeding, it was felt that the Government like any other employer must retain the right to hire and fire, and, within reasonable limits, should not be criticized for letting security reasons prevail over private interest. In proceedings of this kind there is, of course, always the danger of gross abuses. But the good sense of the Executive Department and Bureau heads has plainly prevailed in the endeavor to prevent these at this time. Should injustices become plainly apparent or widespread, then it would be appropriate for this Committee to make representations.

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General Lew Wallace:

Indiana Lawyer Who Won Fame as an Author

by **Walter P. Armstrong** • of the Tennessee Bar (Memphis)

■ A colorful lawyer-soldier-author of the last century is the subject of this sketch. Few lawyers have won fame equal to that of Lew Wallace through activities not involving law, politics or public office. Walter Armstrong has sifted the evidence as to Wallace's attitude and state of mind regarding the practice of the law—did the Indiana lawyer hate the law, or detest merely its drudgery, or find more congenial interests in the Army and in authorship? Many or some of our elder readers in the Middle West will disagree with some angles of the appraisal of Lew Wallace's controversial career, but the reminiscent narrative is interesting.

■ Which three Americans who not only studied law but were active practitioners achieved the greatest successes in non-political fields outside the law? Many lawyers would select William Wetmore Story, Richard Henry Dana, Jr., and Lew Wallace. Story was one of our top-flight sculptors; Dana's *Two Years Before the Mast* is an American classic; Lew Wallace's *Ben-Hur* almost tops the all-time list of native-authored best sellers, and it brought to the author the greatest financial reward ever received up to that time by an American writer.

Story, the son of Justice Story, was devoted to and extraordinarily successful in the profession. Notwithstanding the exacting requirements of a lucrative practice, he found time to write two commentaries on the law.[1] When Story was twenty-six the Justice died and his son was offered a commission to execute a statue of his father. He accepted, did an excellent job, and never returned to the law. "My mother," he later recalled, "thought me mad and urged me to pursue my legal career, in which everything was open to me."

Dana's fame as an author came while he was still among "the lesser breeds without the law". The voyage that provided the material for *Two Years Before the Mast* interrupted academic years at Harvard. The book was published the year the author was admitted to the Bar (1840). During the remainder of his life, Dana was an active practitioner, specializing in admiralty law and preferring always the role of an advocate.

Wallace had a more colorful, though not a more distinguished, career than either Story or Dana. He was a second lieutenant under Zachary Taylor in Mexico. In the War Between the States, he was the youngest major-general in the Union Army.[2] Later he was a major-general in the Mexican Army under Juarez. He was Territorial Governor of New Mexico in the heydey of Billy the Kid, whom Wallace knew well and whose murderous proclivity posed one of the Governor's acutest problems. He was Minister to Turkey and a close personal friend of Sultan Abdul Hamid.[3] *Ben-Hur* was not his only literary success; almost any author would have been satisfied with the popularity of *The Fair God* and *The Prince of India*.

What was the attitude toward his profession of the lawyer whose inclination and talents made for him this career? While a recently published admirable biography of Wallace[4] does not detail his career at the Bar, the author does answer this question: "At various times and in varying degrees he hated a long list of men and things—Zachary Taylor, General Morris, Stanton, Halleck, Grant, Colonel Elston, Democrats, *the law*, lecturing, English imperialism, persons who could not applaud the simple virtues." (page 268). Also, in the *Dictionary of American Biography* I find the statement that "the law he did not like."[5]

Wallace's Career at the Bar Was Hardly Impressive

It is easy to understand how Wallace was allured to his adventurous career. But did he actively dislike

1. *A Treatise on the Law of Contracts Not Under Seal* (1844) and *A Treatise on the Law of Sales of Personal Property* (1847). Story also edited several volumes of reports.

2. Wallace's military career did not escape controversy and censure by some. At Shiloh his division was ordered to support the main Union Army under severe attack at Pittsburg Landing. Six hours were required to negotiate the six miles that had to be covered. In fact Wallace had raced for the wrong goal. The result was a long-drawn out controversy. Had Grant been at fault in not giving more explicit orders? Had Wallace blundered in not ascertaining from the sound of the firing and otherwise the locale of the battle?

3. Wallace would sometimes widen the eyes of the Hoosiers by snapping open the jewelled cigarette case "The Great Assassin" had given him.

4. "Ben Hur" Wallace. By Irving McKee. Berkeley: University of California Press. 1947. $4.00. Pages 301.

5. Vol. XIX, page 376. The sketch of Wallace by A. A. Lawrence.

the law, or was he one of the many who did not love Caesar less, but Rome more? I am not sure that I have found the answer.

Wallace's career at the Bar was brief and interrupted. He was admitted in 1849 and began practice in Indianapolis. He served as prosecuting attorney for four years. In 1853 he moved to Crawfordsville, where he practiced until Sumter was fired upon. After the war ended he was in Mexico for a short time, and then resumed his practice and continued it until he was appointed Governor of New Mexico in 1878.

In the meantime Wallace had had some judicial experience as a member of the military commission which tried those accused of complicity with Booth in the assassination of Lincoln, and as president of the military commission that tried and convicted Captain Wirz, commandant of Andersonville prison.[6]

Wallace Found Law Office Routines Horrendous

It was to Wallace's autobiography[7] that I turned for an answer. The result was interesting if not rewarding. Wallace does not detail at length his experiences at the Bar; nor can it be said that he speaks of the law *con amore*. What he does say is worth recalling.

It is true he says that the routine of the law office "had always appeared to me the champion horror of horrors". But he adds "that, however, was but one side of the practice —its ugly side—and I shrank from it. On the other hand, often as I held the opposite at angles for study the routine vanished. Appearances in Court, for instance, with their accessories—judge, jury, the public, and the commonwealth behind them —was there an occupation so fascinating to a soul confident in itself to the superlative of vanity? Then, dropping the mere personal consideration, was there a progressive movement in organized society or a useful scheme involving cooperative energy, from a town ordinance to a continental railway, that had not its fashioning and finish from a lawyer? And as to the stepping-stones in politics—well, ideas of the sort caught me, and I determined to take to the law." (page 98.)

Wallace Had Difficulty as to His Bar Examinations

The force of the counter and stronger attraction of adventure is best illustrated by what occurred when Wallace first took the examination for practice before the Supreme Court of Indiana. The examination was held by Justice Isaac Blackford. This was not the first time that Wallace and Blackford had met. Some years before Wallace and some youthful companions discovered a room immediately underneath the conference chamber of the justices. From this vantage point they had punctuated judicial pronouncements with floor tappings and sometimes with ribald remarks. The culprits were apprehended, and Justice Blackford administered stern rebuke. Another handicap was that the Mexican war was imminent, and Wallace had been latterly devoting more time to Scott's *Infantry Tactics* than to his law books. Wallace thus puts the result of his examination:

> I was not at all satisfied with my work, and at the foot of the last page appended a note, the flippancy of which makes my face burn as I now write:
>
> "Hon. Isaac Blackford, Examining Judge:
>
> "Dear Sir,—I hope the foregoing answers will be to your satisfaction more than they are to mine; whether they are or not, I shall go to Mexico.
>
> "Respectfully,
>
> Lew Wallace."
>
> If the judge were wanting an excuse to punish me, I had furnished it. Two or three days afterwards I received a notice through the post-office:
>
> "Supreme-Court-Room
>
> Indianapolis
>
> "Mr. Lew Wallace:
>
> "Dear Sir,—The Court interposes no objection to your going to Mexico.
>
> "Respectfully,
>
> Isaac Blackford."
>
> The communication was *un*accompanied with a license.[8]

No great harm was done. On his return from Mexico Wallace again took the examination, and three or four days thereafter "received a carefully sealed official envelope addressed 'Lewis Wallace, Esquire, Attorney-at-Law'. It contained two enclosures: one the coveted license, signed 'Isaac Blackford, Judge'; the other, a brief explanatory note over the same signature with a postscript —'Permit me to congratulate you upon your safe return from Mexico.' "[9]

Wallace's Account of Hearing Sergeant S. Prentiss

Wallace's tentative choice of the law as a vocation was probably fortified by the fact that on his way home from Mexico at New Orleans, he was enthralled by Sergeant S. Prentiss, the greatest lawyer-orator of the time. Wallace's description:

> Mr. Prentiss was at his height of fame. I remember his appearance distinctly. He was rather low in stature, full-chested, clean-shaven, and faultlessly dressed. His head was ample, round, superbly set. The brows arched high, allowing the large eyes to fill with light—eyes that would have made an ugly face beautiful. Eyes, countenance, head, mouth permissive of every variety of expression, profile, attitude, the whole man, in fact, brought me to think of pictures of Lord Byron. Like Byron, moreover, he was clubbed in one foot. I had intended taking a glance at him, hear his opening, then go away. To my astonishment, when he sat down more than an hour had passed. I had heard every word in rapt unconsciousness of my discomforts. In moments when his face was turned fully to me I caught the seeming transfiguration elsewhere alluded to. No other orator ever held me so completely. Of the singers whom I have been permitted to hear, not even the divine Patti ruled me half so tyrannically. Bearded and bronzed as were the soldiers of his audience, they cried till the tears left glistening paths down their cheeks.[10]

6. Wallace's conduct as a member of these commissions was criticized as not commendable; he was not judicial and was regarded as going to extremes to secure convictions. There is grave doubt as to the legality of either commission. Cf. *Ex Parte Milligan*, 4 Wall. 2, and Warren's *The Supreme Court in United States History*, Vol. 3, pages 122, 165-66. Competent historians have characterized the conviction and execution of Mary Surratt as little better than a judicial lynching. A recent but short-lived Broadway play pointed up this tragedy: *The Story of Mary Surratt*, which opened February 8, 1947, at Henry Miller's Theatre.

7. *Lew Wallace, An Autobiography*. New York: Harper & Brothers. 1906. (2 vols.)

8. *Autobiography*, pages 112-13.

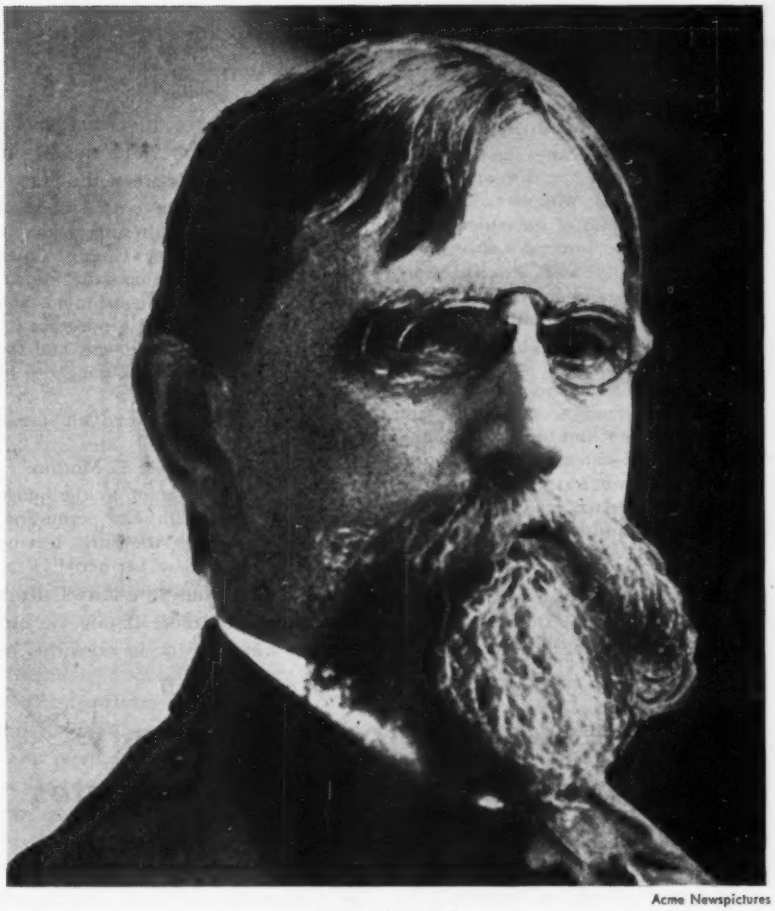
9. *Ibid.*, page 212.

10. *Ibid.*, pages 194-95.

Wallace's Stories of Daniel W. Voorhees on Circuit

There are stories of other great lawyers—of many encounters with Daniel W. Voorhees, the "Tall Sycamore of the Wabash". One of the stories about Voorhees concerns another lawyer:

> Mr. Voorhees came to my office one day.
>
> "What are you doing?" he asked.
>
> "Nothing."
>
> "Well, it is the same with me, so I propose we chip in and hire a horse and buggy and go to Danville."
>
> The reference was Danville, Illinois.
>
> "What's going on there?"
>
> "Court is in session—that's all."
>
> We reached the town about dusk and stopped at the tavern. The barroom, when we entered it after supper, was all a-squeeze with residents, spiced with parties to suits pending, witnesses, and jurors. The ceiling was low, and we had time to admire the depth and richness of the universal smoke-stain of the wooden walls. To edge in we had to bide our time. Every little while there would be bursts of laughter, and now and then a yell of delight. At last, within the zone of sight, this was what we saw: In front of us a spacious pioneer fireplace all aglow with a fire scientifically built. On the right of the fireplace sat three of the best story-tellers of Indiana, Edward A. Hannegan, Dan Mace, and John Pettit. Opposite them, a broad brick hearth intervening, were two strangers to me whom inquiry presently identified as famous lawyers and yarn-spinners of Illinois.
>
> One may travel now from the Kennebec to Puget Sound and never see such a tournament as the five men were holding; only instead of splintering lances they were swapping anecdotes. As to the kind and color of the jokes submitted to the audience, while not always chaste, they never failed to hit home.
>
> The criss-crossing went on till midnight, and for a long time it might not be said whether Illinois or Indiana was ahead. There was one of the contestants, however, who arrested my attention early, partly by his stories, partly by his appearance. Out of the mist of years he comes to me now exactly as he appeared then. His hair was thick, coarse, and defiant; it stood out in every direction. His features were massive, nose long, eyebrows protrusive, mouth large, cheeks hollow, eyes gray and always responsive to the humor. He smiled all the time, but never once did he laugh outright. His hands were large, his arms slender and disproportionately long. His legs were a wonder, particularly when he was in narration; he kept crossing and uncrossing them; sometimes it actually seemed he was trying to tie them into a bow-knot. His dress was more than plain: no part of it fit him. His shirt collar had come from the home laundry innocent of starch. The black cravat about his neck persisted in an ungovernable affinity with his left ear. Altogether I thought him the gauntest, quaintest, and most positively ugly man who had ever attracted me enough to call for study. Still, when he was in speech, my eyes did not quit his face. He held me in unconsciousness. About midnight his competitors were disposed to give in; either their stores were exhausted, or they were tacitly conceding him the crown. From answering them story for story, he gave two or three to their one. At last he took the floor and held it. And looking back, I am now convinced that he frequently invented his replications; which is saying he possessed a marvellous gift of improvisation. Such was Abraham Lincoln.[11]



Acme Newspictures

LEW WALLACE

Wallace Describes His Own Career at the Bar

Of his own career at the Bar Wallace merely says:

> Not wishing to weary one disposed to honor me with an interest in the recital of my life, I shall not linger over the part of it given to the practise of law. Along with many things not admirable, I did some things that were thought smart. I had my triumphs; and it is not a little surprising to me now how readily I bring myself to shove them into the same pigeonhole devoted to my defeats.
>
> In 1850 the office of prosecuting attorney was of importance, and, being elective, candidates for it were chosen by the political parties at the biennial conventions held for the nomination of congressmen. When well administered it brought the incumbent profit,

11. *Ibid.*, pages 221-23.

experience, and extended acquaintance. So, seeking the nomination, I was lucky enough to secure it and be elected—successes which lost nothing of flavor when promptly reported at the castle in Crawfordsville.

On the trial of cases, the main difficulty, as I speedily discovered, was the memory of witnesses. Many of them had a habit of conveniently forgetting in the interval between sessions of the court what they had sworn before the grand jury. The lapses were both fatal and provoking until I hit upon a remedy. It consisted in carefully entering in a journal the testimony as given, reading it to the witness in presence of the jury, and then requiring him to affix his signature to the statement. When, next court, the case was called for trial, I took him apart, read to him from the journal, and confronted him with his signature. If he faltered, a gentle reminder of the pains of perjury always sufficed to bring him round to the side of justice.

The work was heavy, but that mattered nothing. It was profitable, and more—it was love's labor not lost.[12]

The Trial Lawyer Becomes the Soldier

Wallace's story of his legal career does not extend beyond the beginning of the War Between the States:

> Somewhat late in the afternoon of April 13th I was addressing a jury in the Clinton County Circuit Court when the telegraph operator of the town came into the court-room, and told the judge he had a telegram for me. The judge spoke to me, and the sheriff put into my hand a message in words very nearly these:
>
> "Sumter has been fired on. Come immediately.
>
> "Oliver P. Morton."
>
> I gave the telegram to the judge to read, and, with his permission, excused myself to the jury, leaving the case to my law partner.[13]

Did Wallace hate the law? I think he detested the office drudgery, but was not immune to the stimulus of advocacy. Litigants, judges, jurors, witnesses, primarily interested him as characters in the *comedie humaine;* but more interesting and no less real were the figures that teemed in the "phantasmagoric chamber of the brain".[14]

12. *Ibid.*, pages 224-25.

13. *Ibid.*, page 261. Morton was at the time Governor of Indiana.

14. In a personal letter received after this article was written, and quoted with permission, Dr. McKee writes:

"As to your query about Wallace hating the law, you yourself note that I qualified that with 'at various times and in varying degrees' and of course I meant in short layman language that he sometimes hated the dull routine in rural courtrooms. I state that he liked dramatic, important advocacy. My authorities are mainly two: A letter from W. to his half-sister Agnes, and the testimonial by his fellow attorneys, in which I find the inference that W. did not often have his heart in regular legal practice. The 'intolerable old rut', referring to his legal work, is quoted from the letter to Agnes W. cited above.

"Of course I do not feel that all this is a reflection upon either W. or the legal profession. He just did not have it in him to be a Lincoln or a Holmes—his talent lay elsewhere."

American Aid for European Recovery Again Approved by House of Delegates

■ At its closing session in Chicago on February 24, the House of Delegates again voted its approval, in principle, of American financial aid for European recovery. The Committee for Peace and Law Through United Nations had reported to the House that the basic principles approved unanimously by the House last September "still hold good".[1]

Frederic M. Miller, of Iowa, Vice-Chairman of the Committee and Chairman of the Section of International and Comparative Law, submitted to the House a "Marshall Plan" resolution from his Section's Council. Reporting to the House on February 24, State Delegate Osmer C. Fitts, of Vermont, Chairman of the Committee on Draft, explained that his Committee could not consider the Resolution as submitted "because of its indefiniteness and lack of facilities for specific study of the political issues involved". The Committee therefore amended the resolution and recommended its adoption in the revised form. This was voted.

In its final form, the Resolution adopted by the House on February 24 endorsed the Marshall Plan "in principle", and related the economic recovery of European Nations to the advancement of the administration of justice. The Resolution read:

> WHEREAS, the Constitution of this Association provides, among other things, for the advancement of the science of jurisprudence and the promotion of the administration of justice; and
>
> WHEREAS, these objectives cannot be advanced effectively in countries that lack economic and financial stability;
>
> NOW, THEREFORE, BE IT RESOLVED, that this Association endorses in principle aid by the United States of America for European recovery so that stability may be restored to war-devastated European countries and the administration of justice therein may be advanced.

1. The Committee's Report filed February 23 said:

"The subjects under most active debate in the Congress and in the forum of public opinion at present were before the House of Delegates last September (33 A.B.A.J. 1090, 1164), when unanimous action was voted in support of basic principles which in the opinion of your Committee still hold good. By-partisan formulation and united support for the foreign policy of our country were again urged (33 A.B.A.J. 1164), along with undivided support of the United Nations (33 A.B.A.J. 1092). The action of our Government in giving aid to Greece was specifically endorsed and supported (33 A.B.A.J. 1164). As to American aid for European recovery, the following declaration was submitted by your Committee and unanimously approved by the House (33 A.B.A.J. 1164):

" 'RESOLVED FURTHER, That the American Bar Association endorses and supports in principle the proposal of the Government of the United States that the Nations of Europe which need financial and other assistance from the United States in the restoration of their economy and the maintenance of their governments against aggressions and infiltrations shall first mobilize their own resources in helping themselves and each other and shall establish their own organized means of cooperating with each other for the removal of trade barriers and for the maintenance of united action by themselves against aggression and propaganda from outside their borders; and that the extent of the financial needs of such Nations and the extent of their cooperation in such a policy shall be ascertained and made known, before the United States undertakes commitments.'

"The principles stated in the House action last September, before there was a European Recovery Plan or a definitive Marshall Plan, have been increasingly emphasized and adhered to in legislative and public discussions. That American aid should go to Nations which organize to help 'themselves and each other' and that collective self-defense against aggression should be established through some organization of the nations of Western Europe are objectives toward which progress seems to be made, in Europe and in American Policy."

13

Military Obligation of Citizenship:

House of Delegates Favors Universal Training

■ On the recommendation of the Board of Governors, the House of Delegates on February 23 gave emphatic recognition to the military obligation inherent in American citizenship and aligned itself with those who urge legislation for universal military training.

■ The Resolution adopted after debate had shown a minority in opposition was as follows:

> RESOLVED, that the American Bar Association, recognizing that the military obligation of citizens to take part in the defense of our country when need arises is basic in our Constitution and laws and that the conditions of modern warfare require training and technical skills on the part of defense forces, hereby urges that legislation for universal military training of young men and women at suitable ages be now enacted by the Congress.

President Tappan Gregory had placed the subject before the Board of Governors at a meeting last November. William L. Ransom, of New York; Walter M. Bastian, of the District of Columbia; and James G. Mothersead, of Nebraska, were named as a committee to draft a resolution for consideration. On February 21 the Board voted to submit the report to the House.

"Few will gainsay that universal training for the Armed Forces is one of the most important subjects under debate in the Congress and in the forums of public opinion," declared the report. "Events in the world have inexorably made it so. There is no peace in the world; strength in readiness for defense is the price of security, probably the price of life itself for millions of our people. 'To provide for the common defense' is a basic purpose of our government as well as duty of our people. Modern warfare can be waged only by great numbers of well-trained men in all three branches of the service. A large proportion of them have to be trained technicians and specialists. Surprise and disaster can be averted only if they are trained and available before hostilities start. In the war of the future, training cannot *follow* a draft."

Military Obligation Implicit in Our Constitution and Laws

Discussing the province of our Association and the right of the House to state its considered view on such a subject, the report took a stand that American citizenship carries with it an inherent obligation to bear arms in defense of our country if need be (See: "American Citizenship: Can Applicants Qualify Their Allegiance", 33 A.B.A.J. 95, February, 1947; 33 A.B.A.J. 323, April, 1947; 33 A.B.A.J. 540, June, 1947; discussing the decision in *Girouard* v. *U. S.*, 328 U. S. 61). The report placed before the House said:

> The military obligation of citizenship is implicit in our Constitution and laws. *Willingness* to bear arms in defense of our country is historically the duty and privilege of Americans; *readiness* to bear arms and take part in the common defense is now equally essential. It can be no longer merely a patriotic state of mind. Training for the skilled tasks of war must go along with the historic obligation. Universal military training presents a vital principle and crucial issue, in which the existence of our free institutions and the spirit of our laws are at stake. Laws which will exemplify and fulfill this basic obligation of citizenship in a free country are plainly within the scope of our Association's interest. To speak out for the military obligation of citizenship and for training to fulfill it is to speak out for the things for which our Association has always stood.

Reasons for Recommending Action by the Association

The report stated that the advisability of Association action "may be arguable, as the subject is still sharply divisive among our people", and continued by saying:

> Numerous national organizations, including many of those with whom our Association has often found itself aligned, are conducting vigorous campaigns for UMT. Our Association has not always, perhaps not ordinarily, taken a stand on issues so controversial—issues which concern us preeminently as citizens rather than as an organized profession. We can hardly claim that lawyers as such are specially expert as to military preparedness. The support of our Association for UMT legislation would be welcomed by its sponsors; our failure to take a stand would be regretted and chal-

13

Military Obligation of Citizenship

lenged by many. Our Association has many objectives for which it is contending, in fields which directly concern lawyers as such.

The report concluded that:

> Upon full consideration your subcommittee is of the opinion that the need for obligatory military training is imminent and is vital to the maintenance of our Constitution and laws; also, that the reassertion and recognition of the duty of all citizens to be prepared to take part in the effective defense of our country will do much to end divided and timorous loyalties and reawaken and unify the patriotic spirit of Americans.

An especial reason for Association action at this time was stated as follows:

> Having insistently urged international organization and the establishment and support of the United Nations, and our country having followed that course, we of this Association have an especial responsibility to see to it that the American people are not left in a false sense of security because of the existence of the United Nations. Fervently as we hope it can some day maintain the peace of the world, it cannot defend and protect us now against totalitarian attack. We owe the duty of letting our people know that despite the international organization which we have advocated, our country must be strongly ready to defend itself against attack by those who have thus far sabotaged the United Nations.

Debate and Division as to Adopting Resolution

For the Board of Governors, the resolution was offered by William L. Ransom, of New York. It was supported also by Edmund Ruffin Beckwith, Chairman of our Association's Committee on the Legal Aspects of National Security. In opposition, former Judge Floyd E. Thompson, of Illinois, said that he favored "military training" but did not agree with the resolution as submitted. He said that any vote by the House should be upon a specific bill. W. E. Stanley, of Kansas, favored a declaration only in favor of the "principle" of universal military training, but his substitute motion to that effect was defeated. At the opening of the debate, a point of order was made by Judge Thompson, that the Resolution was not within the province of the Association. Chairman Howard L. Barkdull overruled the point of order. On an appeal taken by T. M. Dalphin, Jr., of Kentucky, the House sustained the decision of the chair.

The House of Delegates has stated the considered view of a majority of its members on the highly important question of legislation for universal military training. Members of the House and of our Association retain and will express their own views, which in many instances will not agree with those voted by the House. Such are the representative processes of our Association.

14

Military Justice:

Association Urges Check on Command Control

■ On the central issue presented by the inadequacy of the Elston bill (H.R. 2575) in the form in which it passed the national House of Representatives (34 A.B.A.J. 129 and 216; February and March, 1948), our Association on February 23 took stand strongly in favor of the plenary measures recommended by the Advisory Committee nominated by our Association and appointed by the Secretary of War, for the checking of command control over Army courts martial.

■ The resolutions specifying the needed amendment of the Elston bill (H.R. 2575) were submitted to the House of Delegates by Chairman William H. King, Jr., of our Association's Committee, with the active support of various local Bar Associations (34 A.B.A.J. 216; March, 1948). Opposition was offered by John R. Snively, of Illinois, for the Section of Criminal Law, which was said to have been studying the subject through a Section Committee. State Delegate Osmer C. Fitts, of Vermont, who was in the JAG Department during World War II, argued effectively in support of amending the bill as urged by the Advisory Committee. President Tappan Gregory took the floor to remind that advocacy of the Advisory Committee's recommendations and further consideration of the subject was fully in the hands of Mr. King's Committee rather than the Section and that the Assembly (33 A.B.A.J. 1238; December, 1948) and the House of Delegates twice (33 A.B.A.J. 394, April, 1947; 34 A.B.A.J. 80, January, 1948) had voted support of the Advisory Committee's stand as to commanding-officer control or influence in courts-martial proceedings. In view of the inadequacy of the Elston bill in this respect, the House of Delegates adopted with virtual unanimity the resolutions directed to this major defect.

History of the Subject Shows Need for Amendments

The recitals of the resolutions adopted by the House of Delegates refer

first to the fact that on March 25, 1946, the Secretary of War appointed an Advisory Committee consisting of distinguished lawyers nominated by the American Bar Association, with the present Chief Justice of New Jersey, Arthur T. Vanderbilt, as its Chairman, to study the administration of military justice within the Army and the courts-martial system and to recommend such changes in laws, regulations and practices as are necessary or appropriate to improve the administration of military justice. The Committee is recited as having devoted itself to that purpose until it rendered its report on December 13, 1946, after holding hearings in Washington, New York, Philadelphia, Baltimore, Raleigh, Atlanta, Chicago, St. Louis, Denver, San Francisco and Seattle, taking testimony, issuing questionnaires, and hearing general officers, field officers, junior officers, enlisted men and civilians and holding other personal interviews.

The Advisory Committee made six specific recommendations for immediate action; and the first was for the checking of command control in courts-martial procedures, to which were devoted more than four out of five and one-half pages dealing with such recommendations. The Secretary of War on February 20, 1947, in announcing his action on the report, disapproved the measures for checking command control,

> for the reason that it was believed that the ends of military justice would be more effectively accomplished if appointment of courts and initial review of cases were left in the persons exercising command.

On January 15, 1948, the House of Representatives, after debate (34 A.B.A.J. 129; February, 1948) passed the Elston bill (H.R. 2575), which completely retains in the commanding officer control of the judicial processes inherent in courts martial.

The Resolutions recite that in no other civilized community in the world is the authority to appoint the prosecutor, the defense counsel and the Court, and the right to pass upon the judgment of the courts martial, vested in the same person, as in the system which is now in force in the Army and will be continued in force unless H.R. 2575 is appropriately amended. The Elston bill prohibits and condemns command control in these respects, but does nothing to end it. So the resolutions point out that "there can be no justification for the influencing of courts martial by the commanding officer" and that "there can be no justification for the rejection of the Advisory Committee's recommendation with respect to the checking of command control" except a desire to continue a right of the commanding officer to influence courts martial in disregard of the avowed policy of the proposed law. Either the specific declaration of the bill is wrong and should be taken out, or the declaration should be fully implemented as recommended by the Advisory Committee.

Based on the recitals summarized as above, the resolutions are as follows:

Text of the Resolutions Favoring Amendments

> RESOLVED, that this Association urge the Senate of the United States to amend H.R. 2575 by vesting in the Judge Advocate General's Department the following powers now vested in the commanding officer:
>
> a. The right to appoint general or special courts martial.
>
> b. The right to appoint defense counsel.
>
> c. The right to pass upon the sentence of general and special courts martial except for the right to mitigate that court's sentence, which should remain in the commanding officer.
>
> FURTHER RESOLVED, that said bill should be further amended so that both the trial judge advocate and defense counsel must be lawyers and, where available, members of the Judge Advocate General's Department.
>
> FURTHER RESOLVED, that for and in the name of this Association, its appropriate officers, governors, delegates and members and its Committee on Military Justice do all acts and things necessary and proper to cause the Senate of the United States to effect the amendments above suggested and such other amendments as will make the courts-martial system of the United States Army a true system of justice before whose tribunals the citizens of the United States will, so far as may be possible, be assured of a fair and impartial trial.

Blank & Stoller

WILLIAM H. KING, JR.

Unless the Elston bill is amended by the Senate Committee on the Armed Services so as to carry out the recommendations of the Advisory Committee and the foregoing resolutions, the respective Committees of our Association and of the numerous local Bar Associations which have interested themselves in the subject believe that enactment of the Elston bill would accomplish substantially no reforms on the principal issue.

15

Nominations for 1948-49:

Officers, Four Members of Board Named

■ The State Delegates elected by the members of our Association in forty-eight States and the Territory of Alaska met in Chicago on February 24 and made the following nominations for Association officers and members of the Board of Governors, for the elections to take place at the Annual Meeting in Seattle, Washington, next September 6-9:

For President: FRANK E. HOLMAN, of Seattle, Washington;

For two-year term as Chairman of the House of Delegates: JAMES R. MORFORD, of Wilmington, Delaware;

For Secretary: JOSEPH D. STECHER, of Toledo, Ohio;

For Treasurer: WALTER M. BASTIAN, of Washington, D. C.;

For three-year term as Member of the Board of Governors:

First Circuit: ROBERT W. UPTON, of Concord, New Hampshire;

Second Circuit: EDWARD J. DIMOCK, of Albany, New York;

Sixth Circuit: GEORGE E. BRAND, of Detroit, Michigan;

Tenth Circuit: ALVIN RICHARDS, of Tulsa, Oklahoma.

The nominations for President and Chairman of the House were made after spirited contests. Messrs. Stecher and Bastian are incumbents who were renominated. Independent nominations by petition may be made by members of the Association for any of the above offices. The deadline for the receipt of such nominations is May 22.

This year's nominations by the State Delegates may be regarded as unusual in several respects. Only John W. Davis, Charles E. Hughes, Charles S. Whitman and Silas H. Strawn have in recent years been elected as President without previous service in the Board of Governors or its predecessor Executive Committee. Mr. Holman is thus the first nominee in twenty years who has not had this previous experience. Messrs. Upton and Dimock, nominees for the Board of Governors, have never been State Delegates. All of this year's nominees have, however, served in many activities of our Association and as members of the House of Delegates.

McBride & Anderson

FRANK E. HOLMAN

As that body has increasingly been conducted, its members gain therefrom a thorough familiarity with the work, finances and affairs of the Association. It will generally be regarded as a favorable development that a nominee for President can at times be chosen from the Bar without his having served in the Board of Governors and that others than State Delegates may be named for the Board of Governors.

Frank E. Holman

For the first time in the seventy years of our Association's history, a lawyer in the Pacific Northwest has been nominated for the office of President. Mr. Holman was born in Sandy City, Utah, in 1883, and was graduated from the University of Utah in 1908. As a Rhodes Scholar he studied at Oxford University in England, and received the degree of B.A. in Jurisprudence in 1911, followed by a M.A. in 1914.

He was an instructor in the University of Utah Law School in 1912-13 and Dean of its Law School in 1913-15, but resigned to enter private practice. Admitted to the Bar of Utah in 1912, he practiced law successfully in Salt Lake City until 1924, when he removed to Seattle and soon afterward became a partner in the firm of Donworth, Todd and Holman. Upon the retirement of Judge Donworth and Mr. Todd, Mr. Holman became, and has ever since been, the very active head of this leading law firm engaged in the general practice of law.

Mr. Holman had been Chairman of the Utah State Board of Bar Examiners in 1920 and Vice President of the Utah State Bar Association in 1923, and would have been its President in 1924 but for his removal to Seattle. He was President of the Seattle Bar Association in 1941 and of the Washington State Bar Association in 1945.

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JAMES R. MORFORD

Member of our Association since 1922, he has taken an influential part in many of its activities, and has served in the House of Delegates continuously for six years, representing the Washington State Bar Association. When what is now called the Committee for Peace and Law Through United Nations was created by the House in February of 1944, he became one of its members, and has ever since been a leader and exponent of its work. He is a member of the Board of Directors of the American Bar Association Endowment, and was one of the early members of the Advisory Board of the JOURNAL. He has contributed both scholarly and polemic articles to law reviews for many years. For the JOURNAL he wrote "Forms of Government" (32 A.B.A.J. 190; April, 1946), "'World Government' No Answer to America's Desire for Peace" (32 A.B.A.J. 642; October, 1946), "Precedents and Prefaces: Elizabeth to Blackstone" (33 A.B.A.J. 667; July, 1947) and a contributed editorial, "News That Does Not Get Space" (33 A.B.A.J. 469; May, 1947). He is a member of the American Society of International Law and the American Institute of Pacific Relations, a trustee of the School of Public Law (Washington, D. C.), and Vice President of the Board of National Directors of American Rhodes Scholars.

In addition to his experience in the work of the organized Bar, Mr. Holman's nomination for the presidency of our Association is due chiefly to his high standing as a lawyer long active in the general practice of law and his vigorous leadership in many patriotic causes and in strengthening the Bar's contributions to the public interest. Individual members of our Association may, and doubtless will, disagree with him on some of his militant views and the force and skill with which he advocates them; but the prospect is that he will be a resourceful, fighting leader for his year in

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office, insistent that such things as our Association selects as its objectives shall be done soundly and well.

In short, for the Association year which will end when he takes the gavel in his home town as the 1948 Annual Meeting ends, our Association, the organized Bar, and the interests of the public, will become Frank E. Holman's principal clients, practically the only clients for whom he will work for the twelve months.

James R. Morford

The nominee for Chairman of the House of Delegates has had a long experience in that body and in the representative processes of our Association, as well as at the Bar and in public service.

He was born in Wilmington, Delaware, in 1898, and attended Dickinson College of Law (1916-17) and George Washington University Law School (1919-21). Between those periods of law study, he was in World War I as an ensign in the U. S. Naval Air Service.

Admitted to the Bars of Delaware and the District of Columbia in 1921, he has been engaged actively in the general practice of law for nearly twenty-seven years. He was Assistant City Solicitor of Wilmington in 1923-35, Chief Deputy Attorney General of Delaware in 1925-28, City Solicitor of Wilmington in 1935-38, and Attorney General of Delaware in 1939-43. In politics he is a Republican. He is the senior member of the law firm of Marvel and Morford, in Wilmington, and has been an associate and member of that firm since 1922. He was a partner of Josiah Marvel, the fifty-third President of our Association, who died shortly after his election in 1930. He is co-editor of Marvel's *Delaware Corporations and Receiverships.*

A member of our Association since 1926, Mr. Morford first became the Delaware member of its old General Council in 1932 and continued in the House of Delegates as State Delegate from Delaware until 1943 and as the member of the Board of Governors from the Third Circuit during 1943-46. He was Chairman of that Board's sub-committee on Sections. He has been President of the New Castle County Bar Association and of the Delaware State Bar Association.

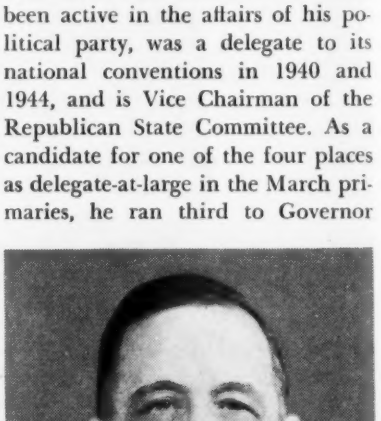
Joseph D. Stecher and Walter M. Bastian

The personalities and careers of the renominated incumbents of the offices of Secretary and Treasurer of our Association are well known to our readers and need not be re-told here. Mr. Stecher is a former Chairman of the Junior Bar Conference (1935-36) and is the 1947-48 President of the Ohio State Bar Association. Mr. Bastian is a leader in the Bar Association of the District of Columbia. Each is engaged actively in the general practice of law. Each has rendered to our Association years of most diligent uncompensated service. Both are members of the Administration Committee which has immediate charge, for the Board of Governors, of the conduct of the Association's business affairs and finances.

Robert W. Upton

Robert W. Upton, of Concord, New Hampshire, member of our Association since 1930, nominee for the Board of Governors from the First Circuit, was born in 1884, and was educated in public schools and at the Boston University Law School. Admitted to the New Hampshire Bar in 1907, he was a member of the State House of Representatives in 1911 and of the State Constitutional Conventions in 1918, 1930 and 1938. He was President of the New Hampshire Bar Association in 1940-41. Since 1945 he has been the Chairman of the New Hampshire Judicial Council.

He is engaged in the general practice of law in Concord; two sons, Richard F. and Frederic K., are associated with him. He has also been active in the affairs of his political party, was a delegate to its national conventions in 1940 and 1944, and is Vice Chairman of the Republican State Committee. As a candidate for one of the four places as delegate-at-large in the March primaries, he ran third to Governor



ROBERT W. UPTON

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E. J. DIMOCK

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GEORGE E. BRAND

Dale and former Governor Blood, fourth place being won by a candidate pledged to former Governor Harold E. Stassen, of Minnesota.

He has represented the New Hampshire Bar Association in the House of Delegates since 1943, and has taken a diligent interest in its work as well as in that of the State Judicial Council and the New Hampshire Bar Association.

Edward J. Dimock

Edward J. Dimock, of Albany, New York, nominee for the Second Circuit, has been a member of our Association since 1921. He was born in Elizabeth, New Jersey, in 1890, and was graduated from Yale University in 1911 and from Harvard Law School in 1914. After his admission to the New York Bar, he was a member of the firm of Hawkins, Delafield and Longfellow from 1918 until the end of 1942. He then became State Reporter in charge of the official publication of Court decisions in New York, but resigned at the end of 1945 to take office as Chairman of the Appeal Board of the Office of Contract Settlement, which position he still holds. His law practice has been principally in litigation, and he has argued cases in many States and federal Courts.

He was the delegate of the New York State Bar Association in the House of Delegates, and Chairman of the New York State Committee on Admissions to our Association since 1939. He has been active in the New York State Bar Association (in which he is Chairman of the Committee to Improve the Administration of Justice) the Albany Bar Association, and the New York Law Institute, as well as in several Sections and Committees of the American Bar Association. Until recently he was a Lecturer on Municipal Corporations at the Yale Law School. He has been a member of the Board of Editors of the JOURNAL since 1944.

George E. Brand

George E. Brand, of Detroit, Michigan, nominee from the Sixth Circuit for the Board of Governors, has been a member of our Association since 1920 and an untiring worker in it and other branches of the organized Bar. He was born in Houghton, Michigan, in 1888, and was graduated in law from the University of Michigan in 1912 and began the practice of law in Detroit that year.

He was a member of the Conference of Bar Association Delegates in 1934-35 and has been a member of the House of Delegates since 1936. In 1934-35 he was President of the Detroit Bar Association and in 1937-38 the President of the State Bar of Michigan (integrated). In 1933-38 he was a member of the Michigan Board of Law Examiners. Since 1947 he has been an incorporator and founder of the State Bar Foundation. From 1942 to 1945 he was the Chairman of the Board of the American Judicature Society; since then, its President.

In our Association he has served on many Committees, and has done particularly notable work in the Committee on Professional Ethics and Grievances and the Committee on Unauthorized Practice of the Law. He is the author of *Unauthorized Practice Decisions,* distributed by our Association.

Alvin Richards

Alvin Richards, of Tulsa, Oklahoma, nominee from the Tenth Circuit for the Board of Governors, has been a member of our Association since 1925, was Oklahoma's State Delegate to the House of Delegates in 1939-42, was Chairman of the Section of Mineral Law in 1940-41, and has served on numerous standing and special Committees of our Association and its Sections.

He was born near Springfield, Tennessee, in 1890 and removed in 1906 to Oklahoma while it was still a Territory. He became a law clerk to a Justice of the first Supreme Court elected after statehood. In that capacity he read law further, and was admitted to the Bar in 1911. He engaged in the general practice of law until 1918, when he joined the legal staff of the Pure Oil Company, where he has since served as Division Attorney.

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ALVIN RICHARDS

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"Books for Lawyers"

MILL ON LIBERTY AND REPRESENTATIVE GOVERNMENT. *Edited, with Introductions, by R. B. McCallum. New York: The Macmillan Company. 1947. $2.25. Pages lv, 109.*

This book does not require a review of usual length, but it does deserve attention and reading by lawyers and others. It is a re-publication of John Stuart Mill's famous *Essay on Liberty*, first published in 1859, and his *Considerations on Representative Government*, first published in 1861, which have been standard and outstanding authorities in the science of government for nearly ninety years. Analysis or criticism of them now would be untimely if not presumptuous. It is very much in order to invite at this time a re-reading and careful study of these profound contributions to what we are defending as our way of life. The separate introduction to each essay by Mr. McCallum facilitates such a study; the editorial notes are in the present tense and on a plane with the original work. To read them and these two great works makes crystal clear the great issues now at stake as to preserving the integrity and the reality of our federal republic.

The disintegrating effects on our government of certain trends toward the elimination of delegated responsibility and the rise of absolute democracy have caused many students of our times to counsel a return to representative government. Mill sounded a warning against the danger of mass tyranny over the more enlightened elements of the body politic. The ostensible rule of mathematical majorities has been found, in this country as in totalitarian lands and even under parliamentary governments, to lend itself to ascendancy and domination by aggressive minorities, "pressure groups", *blocs*, men who know exactly what they want and how to conspire and act noisily and unscrupulously to get it. The popular elections of judges, then becoming a common provision of State Constitutions in America, he considered to be "one of the most dangerous errors ever committed by democracy"—

> . . . the first great downward step in the degeneration of modern democratic government.
>
> No progress at all can be made towards obtaining a skilled democracy unless the democracy are willing that the work which requires skill should be done by those who possess it.

Mill asserted that the ideally best form of government is truly representative government, under which legislators and executives act according to their own best judgment without fear of political consequences and judges heed the law and the written Constitutions. But he did not overlook the indispensibility of an intelligent and active citizenry. One of the necessary conditions for maintenance of that kind of government against mass tyrannies, he said, was that the people "be able and willing to do what it requires of them to fulfill its purposes". He thought that "leaving things to the government, like leaving things to Providence, is synonymous with caring nothing about them, and accepting their results, when disagreeable, as visitations of Nature".

The time is at hand in America for a reconsideration of the foundations of our civilization and our liberties. Our government must be wise, law-abiding, courageous, efficient at home if it is to be preserved in "One World" or capable of coping with a riven world of conflicting ideologies. In fact, the external dangers to our form of federal republic are identic with the philosophies and forces which have insidiously undermined and menaced it from high places within our country. In matter and in manner, in style and in substance, this volume is worthy of wide reading. At least the Introductions should be required reading for members of our Association's Committee on Lawyers' Participation as Citizens in Public Affairs and all who are cooperating for that Committee's objectives. It will prove to be not only an arsenal of ammunition but a fount of inspiration.

ROBERT N. WILKIN
Cleveland, Ohio

YEARBOOK OF THE UNITED NATIONS, 1946-1947. *By the Department of Public Information of the United Nations. Lake Success, New York. November, 1947. $10.00. Pages xxxiv, 991.*

In any discussion of the United Nations, a basic question always arises: How can we learn the facts about the achievements and failures of the United Nations? Is there a book that would give us adequate information on the subject? In the past, one could give only the sorry answer that there is no such book, that most books on the market are superficial, and that a conscientious reply cannot be obtained without a long search among many volumes of printed and mimeographed material. Now a great step forward has been made. The first issue of the *Yearbook of the United Nations* has appeared; it will be followed by annual volumes which will keep it up to date. In between the annual volumes, an improved version of the *United Nations Bulletin*, appearing twice a month, supplies current information. All the important facts have been made easily accessible, and

a reliable guide has thereby been supplied to the general public.

The first volume of the *Yearbook*, despite the ostensible limitation in its title, is not confined to one year's survey. It contains also the data on the origin of the United Nations and of the various specialized agencies, in some cases going as far back as 1865. There is a detailed account of the Dumbarton Oaks Conversations and of the San Francisco Conference. The structure and composition of each organ of the United Nations are described in great detail, and extensive summaries of all the discussions in the General Assembly, the Security Council, and in other councils and commissions are included, together with the verbatim text of most of the important decisions and recommendations.

The second part of the volume contains an account of the activities of the specialized agencies, supplemented by the texts of their constitutions. There is also a United Nations Who's Who, a chronology, a bibliography, and a detailed index.

In a volume of this size some mistakes are unavoidable. For instance, the text of the Atlantic Charter reprinted in the volume follows an early press release on the subject and contains the signatures of President Roosevelt and Mr. Churchill, without mentioning the fact that it has been ascertained later that this document was not actually signed (World Peace Foundation; *Documents on American Foreign Relations*, Vol. VII, page 286). One may mention also that the states which have adhered to the United Nations Declaration have actually signed it, and the dates of signature should have been included in each instance, beside the date of adherence. There are numerous printing errors in the bibliography.

The editors of the *Yearbook* face a difficult problem with respect to the content of the following volumes. Those who have obained the current one will hope that the new will be supplementary in character, while new buyers may expect the new volume to be self-sufficient, especially as few of them would be able to bear the cumulative cost of these formidable and expensive tomes. Perhaps this difficulty may be met by following the practice of publishers of legal digests, who issue not only supplements to old editions, but also publish from time to time new editions incorporating the material contained in the supplements.

In either case, certain improvements could be introduced in future volumes. The most important would be to add in parentheses the numbers of the original documents from which quotations have been made. Otherwise, any further investigation is unduly complicated, especially in view of the lack of an adequate index of United Nations documents. In the bibliography, the common practice of indicating the number of pages of each book should be followed. In addition, a list of articles in legal and other periodicals should be included, as many of these articles are much more valuable than some of the pamphlets and books included in the current volume. The part devoted to the specialized agencies is in many respects inadequate; in particular, but scant use has been made of preparatory material which could have been developed in a way analogous to the treatment of San Francisco documents in the first part of the volume. One might complain also about the dehumanization of the discussions summarized in this volume. It is not enough to say that "the representative of the U.S.S.R." said something; the reader likes to know who spoke these words—whether it was Mr. Gromyko or Mr. Vyshinsky. Where national identification is necessary, the name of the country might be added in parentheses.

But even if no improvement is made and the high standard of this volume is kept, this series should become the primary source of information about the United Nations. This factual and authoritative volume, beautifully edited and printed, should be given a prominent place in the reference library of every person interested in world affairs.

LOUIS B. SOHN

Cambridge, Massachusetts

SELECTED WRITINGS OF BENJAMIN NATHAN CARDOZO. *Edited by Margaret E. Hall.*[1] *New York: Fallon Publications. 1947. $5.00. Pages xxiv. 456.*

"Cardozo I am sure that I should really love if I knew him better. I not only owe to him some praise that I regard as one of the chief rewards of my life, but have noticed such a sensitive delicacy in him that I should tremble lest I should prove unworthy of his regard. All who know him seem to give him a superlative place. I have seen him but once, and then his face greatly impressed me. I believe he is a great and beautiful spirit."

So Justice Holmes wrote Dr. Wu some three years before Cardozo became an Associate Justice of the Supreme Court of the United States.[2]

The next reference to Cardozo in Holmes' letters to Dr. Wu was shortly after Cardozo came to Washington as a member of the Court: "Since I began this I have had a call from Cardozo. I think you would love him as I do and have from the first

1. There is a foreword by Edwin W. Patterson, Cardozo Professor of Jurisprudence at the Columbia University School of Law, and included is the memorial read at the 1938 annual meeting of the American Bar Association by Judge Irving Lehman. Cardozo's own writings selected are:

Values: The Choice of Tycho Brahe (Commencement address delivered at the exercises of the Jewish Institute of Religion. May 24, 1931).

Jurisprudence (Address before the New York State Bar Association, Hotel Astor. January 22, 1932).

Altruist in Politics (Unpublished commencement oration at Columbia College. 1889).

Psychology Lectures Under Dr. Nicholas Murray Butler (Extracts from unpublished notebooks).

Moral Element in Matthew Arnold (Unpublished Columbia College essay).

Essay on Mr. Justice Holmes (Reprinted from the *Harvard Law Review*).

Our Lady of the Common Law (Commencement address at St. John's Law School).

Faith and a Doubting World (Address before the New York County Lawyers. December 17, 1931).

The Nature of the Judicial Process (New Haven: Yale University Press. 1928. 180 pages).

The Growth of the Law (New Haven: Yale University Press. 1927. 145 pages).

The Paradoxes of Legal Science (New York: Columbia University Press. 1928. 142 pages).

Law and Literature and Other Essays and Addresses (New York: Harcourt, 1931. 190 pages).

2. *Justice Holmes to Doctor Wu: An Intimate Correspondence, 1921-1932.* Central Book Company, New York. (Letter of July 1, 1929, page 53).

moment I saw him—a beautiful spirit."[3]

Cardozo more than once formally recorded his admiration for and fealty to Holmes, to whom he referred as "the Master".

The emphasis that has been placed on this master-disciple relationship (which on Holmes' part was slightly condescending) has done Cardozo considerable disservice. Holmes' attitude did polarize Cardozo's views as to the construction of the Constitution. Holmes' judicial style did influence—for better or worse—Cardozo. But when it came to common law problems the spell of "the Master" was impotent. Cardozo, when he worked in the medium of the common law, was not only independent of but he was a far greater judge than Holmes.

This opinion, long held, is strengthened by a reading of the volume under review. Among Cardozo's writings, hitherto unpublished (in the trade sense), is the address delivered (1931) before the New York County Lawyers' Association. Cardozo is advocating the theory that here in the United States "we are developing a juristic method and philosophy of our own, differing a good deal from the method and philosophy of the country where the common law was born." (page 102). This argument is pointed up by emphasizing Sir Frederick Pollock's ineptitude (though neither here nor otherwise did Cardozo use so harsh a term) in selecting Holmes' opinions in *United Zinc Co.* v. *Brett*[4] and *B. & O. R. R.* v. *Goodman*[5] as illustrations of Holmes' greatness as a common law judge. After succinctly stating the holding of these cases,[6] Cardozo added: "Now, my admiration for Holmes goes almost to the point of worship. I do not presume to say that his opinions in those two cases were wrong, though I feel pretty sure that one or both would have been decided differently in a great many courts and perhaps in the Court of Appeals of New York. . . . I strongly suspect that if those two cases were to be put to the assembled lawyers at a meeting of this association or of the Association of American Law Schools, the vote would be quite different. . . . I can hardly imagine that they would be singled out as triumphant exhibitions of the master's power." (page 103).

The emphasis of understatement has rarely been the vehicle of more devastating criticism.

Next in importance to this County Lawyers' Association address is Cardozo's discussion, in the address before the New York State Bar Association (1932), of "the judicial hunch"—so christened by Judge Joseph C. Hutcheson, Jr., of the Fifth Circuit.[7] Cardozo's dubiety, however, is as to the nomenclature. Perhaps it may "establish the empire of mere feeling or emotion, of arbitrary preference, and by the same token to disprove the value of conceptions, rules and principles, the value of all logic, till we are driven, like the sophist in the Greek comedy, to proclaim that Whirl is King." (page 26). Rather, he thinks, "the doctrine of the hunch, if viewed as an attempt at psychological analysis, embodies an important truth; it is a vivid and arresting description of one of the stages in the art of thought. The hunch is the divination of the scientist, . . . the apocalyptic insight, that is back of his experiments. . . . The intuitive flash of inspiration is at the root of all science, of all art, and even of all conduct." (pages 27-28, 26).

With his habitual deference Cardozo hastens to disclaim any criticism of Judge Hutcheson: "I do not mean that there was any such misapprehension in the mind of the distinguished judge and author by whom the hunch may be said to have been given its card of admission into the polite society of juristic methodology. I am fearful, however, that the newcomer's importance, even if justly rated by its sponsor, has been exaggerated by others." (page 26).

After all, the difference between Judge Hutcheson and Justice Cardozo seems to be a matter of temperament and approach. New York and Texas are completely federalized—almost thoroughly nationalized—but they are far from being homogenized.

I have dwelt somewhat at length on the Cardozo addresses to the County Lawyers and the New York State Bar Association because they supplement his previously published expositions of his philosophy and hitherto have been available only in the proceedings of the associations. Some of the other papers—such as the "Essay on Mr. Justice Holmes" and "Our Lady of the Common Law"—although never before included in any volume of Cardozo's writings, attained considerable circulation when they appeared in law reviews.

Of three of the papers included, two have never before been in print, while one appeared only in a Columbia College class book. Of these the extracts from Cardozo's note books on Dr. Nicholas Murray Butler's psychology lectures have some interest as showing the development of Cardozo's philosophy; "The Altruist in Politics", a commencement oration delivered in 1889, shows Cardozo the stylist trying his 'prentice hand.

The third of these is a student study, "The Moral Element in Matthew Arnold". Cardozo was deeply impressed by Arnold's exquisite style and intensely moral tone; indeed, this essay not only furnishes a clue to Cardozo's literary craftsmanship but reveals a lasting influence in much of Cardozo's extra-judicial writing. Writing of Arnold's style Cardozo said: "He had a habit of iteration that, as Mr. Henry James

3. *Ibid.* (Letter of March 14, 1932, page 58).
4. 258 U. S. 268.
5. 275 U. S. 66.
6. "He singled out for special admiration and approval the decision of the great master in *United Zinc Co.* v. *Brett* (258 U. S. 268), where the holding was that the possessor of land is never liable to a child trespasser unless the trespass was induced by the allurement of a dangerous condition known to the child in advance of the unlawful entry, and the decision in *B. & O. R. R.* v. *Goodman* (275 U. S. 66), where the holding was that a motorist meeting a dangerous railroad crossing is under a duty to get out of his car and look up and down, though unfortunately the decision does not tell us how this act is to give protection against the train that may bear down upon the victim in a moment as he clambers back into the vehicle." (pages 102-3).
7. "Judgment Intuitive: Essays and Addresses on Aspects of Law," Chicago Foundation Press, 1938, $2.00, 227 pages.

observes, almost degenerated into a mannerism; and he had a curious way, which I can only liken to the form of argument known in logic as a sorites, of catching up the closing words of one sentence and incorporating them into the beginning of the sentence following." (page 70). For more than forty years after these words were written they continued accurately to describe the most constant and most noticeable mannerism in Cardozo's own style.

Most of Cardozo's philosophy is contained in two series of lectures delivered at the Yale Law School—*The Nature of the Judicial Process* and *The Growth of the Law*. The volume containing the first series was published more than a quarter-century ago. In a recent interview Somerset Maugham said that he rarely recognized, when read to him, his own books written that long ago. This may be unusual enough to make news, but it is a truism that few of us remember with distinctness both the thought and language of the books of others which we read so long ago. It was, therefore, with some curiosity that I began to reread all of Cardozo's published writings. Could his style have been as felicitious, his arguments as convincing and his conclusions as sound as I remembered them? Would I find that much that Cardozo thought and wrote had been faded by the emollient of the lucubrations of the schoolmen featured in law reviews and sanctioned in judicial decisions?

The answers? The beauty of the style has not perished; it seems imperishable; the strength of the reasoning has not evaporated; it remains an effective antidote to much that has been written since.

Another impression gained by rereading[8] Cardozo's published writings was that in nineteen lectures he succeeded in completely expressing his philosophy of the judicial process as he had definitively formulated it. As he had definitively formulated it—this explains the lacuna in Cardozo philosophy. He never got around to expounding his theory of constitutional construction. Prior to the time he became a justice of the Supreme Court his ideas may not have crystallized; subsequently he may have felt constrained to silence by reasons of propriety.

Whatever the reasons for their restraint, none of the justices of our time has in his extra-judicial writings completely expounded his canons of interpretation of the Constitution and especially his conception of the function of *stare decisis*.[9] Those best qualified for the task were Cardozo, Holmes and Chief Justice Hughes (retired). Holmes may have been muted by the same considerations that I have suggested silenced Cardozo; in any event he confined an expression of his philosophy to his judicial opinions. Chief Justice Hughes, in the interim between his resignation as an associate justice and his appointment as Chief Justice, had an opportunity completely to deal with the subject but of this opportunity he availed himself only to a limited extent. To him, however, the opportunity has come again; in his retirement there is no greater service he can render than a complete exposition of the principles of constitutional construction and the consideration the Court should give to its former decisions under changed and even emergency conditions.

WALTER P. ARMSTRONG
Memphis, Tennessee

THE AMERICAN PHILOSOPHY OF LAW. *By Francis P. LeBuffe and James V. Hayes. New York: Crusader Press. 1947. Pages ix, 418.*

In view of the University of Chicago's Institute for Social and Religious Studies held the week of November 22 and the special attention paid to natural law, the Natural Law Institute held at the University of Notre Dame on December 12 and 13, and the numerous discussions of natural law in the JOURNAL during recent months, including such excellent articles as "Defense Against Leviathan," by Ben W. Palmer (32 A.B.A.J. 329, June, 1946), and "The Higher Law," by Harold R. McKinnon (33 A.B.A.J. 106, February, 1947), the importance of this book is apparent. The critical period through which this generation is passing is causing a search for basic principles. The prevalent doubt, confusion, and despair force us to reexamine our assumptions in an effort to reach the cause of our distress and if possible to arrive at some common ground on which we may build for the future.

We have fought two horrible world wars to defend what we refer to as our way of life. We find that that way is still assailed. We are forced to defend it both abroad and at home. Quite naturally the mind inquires as to the source of that way of life and the requirements for its maintenance.

This book offers what might be referred to as the orthodox philosophy of law. It presents the philosophy which has always been maintained by men of catholic faith. In presenting the thesis, it employs theological concepts and principles of revealed religion. The authors admit that it is not necessary to employ religious dogma to sustain a sound philosophy of law or the fundamental principles of natural law. The great virtue of the book is that it gives us that philosophy of law upon which our jurisprudence and our constitutionalism were founded and brings it down to date "with cases to illustrate principles". Even those who may not agree with its religious and theological assumptions may still be interested in it and profit by it because of its historic significance.

It was due to efforts of men of the church that humanity was lifted out of the anarchy of the Dark Ages. In the Twelfth and Thirteenth Centuries, when the foundations of western civilization were laid, the chief ministers of state and all the justiciars were priests, bishops, deacons, or

8. "Impression gained by rereading." If you have not already read all of Cardozo heretofore published, you are too long and too deeply sunk in sin for me to attempt to save you.

9. Mr. Justice Frankfurter in a recent concurring opinion pointed out that the dissenting opinion of Mr. Justice Black in the same case was contrary to the views of some forty-two former justices, some of whom he named. *Adamson v. California*, 91 L. Ed. 1464 (Decided June 23, 1947).

archdeacons. In the administration of justice they relied primarily on the canon law. But through the extension of their jurisdiction and the revival of learning, they were led to a study of Roman jurisprudence. Natural law philosophy was part and parcel of Roman jurisprudence, and thus Christian ethic and classical humanism were brought into coordination.

The source and purpose of law were examined and the function and authority of government were investigated. The theory of the state was considered in the light of the teaching of a universal church. The law of man's political and social life was considered the same as other universal or natural law. It was something to be discovered, not made. Natural law was considered as underlying all existence and therefore a moral imperative for man because of his moral nature. As a consequence the state itself was subject to law. Bracton, who was a priest and judge, set down the principle which Coke finally quoted to James: The King is under God and the Law.

That is the basis of the difference between constitutionalism and totalitarianism. If law is mere arbitrary command, the authority and power of the state, then there are no fundamental human or individual rights; the state is supreme.

One of the paradoxical and confusing conditions confronting our generation has resulted from the fact that while we were fighting two world wars against that despotic conception of government and law, a modern philosophy which supported that theory of law became popular at home and dominated the national government in Washington. The champions of such modern sophistry have been referred to as Positivists. They frequently referred to themselves as Realists. They expressed a hatred or scorn for all generalities, abstractions, absolutes, and principles. They attempted to reduce the law to a factual science, discarded logic, and relied on "experience."

Their error lay in their failure to accept thought, feelings, and prevalent moral intuitions as part of experience. By rejecting the fundamental insights of human nature, the natural and empirical reality of ideals and standards, they created an illusory theory of realism and a distorted conception of law. They scoffed at the Constitution as mere folklore.

These Positivists got their ideas from John Dewey and Justice Holmes. Holmes' general skepticism and materialism had led him away from the basic principles of natural law philosophy. He said in one of his letters to Pollock: "I see no reason for attributing to man (in the cosmos) a significance different in kind from that which belongs to a baboon or a grain of sand." Again he said: "The only cosmic possibilities that I know anything about are the actualities. I do not know whether our ultimates such as good and bad, ideals, for the matter of that, consciousness, are cosmic ultimates or not."

No one disputes that Holmes was a great judge. As *Life* magazine remarked with penetrating intelligence Holmes said that he did not believe in natural law but he acted as if he did. He was a thorough scholar and a man of excellent judgment and courage. Because of that fact his skepticism had an undue influence. His followers made a fetish of his doubts, and because they lacked his fine intuitive judgment, they became lost in their own superficial conceits. They proclaimed the modern mind "free of childish emotional drags and free from the longing for certainty in the law." To them "the Golden Rule was that there was no Golden Rule". But the extremity to which such an attitude leads is revealed in another letter which Holmes wrote to Pollock: "I wonder cosmically if an idea is any more important than bowels."

Of course if there is no difference between mind and matter, then the Positivists and Totalitarians are right and force will rule the world. But natural law philosophy is founded upon the assumption that man is different from the rest of nature because of his mind and spirit, and one of the most encouraging signs of the times is the revival of interest in that philosophy. It has become apparent to many that we cannot maintain our way of life by scoffing at the principles upon which it was built.

The publication of this volume will facilitate the efforts of all those who wish to review the fundamental principles of our jurisprudence, the concepts of natural law philosophy and their relation to our form of government.

> The purpose of this jurisprudence or philosophy of law is to point out the unity and organic character of law and to give a succinct and yet comprehensive grasp of the basic implications of law so that as professional men, who stand in such vital relation to the law of the land, lawyers may clearly and intelligently and constructively further what is good in law and inhibit evil tendencies that may arise or tend to arise because of distorted ideals.

It is regrettable that the galley and page proofs of the book were not given a more careful reading. There are typographical and other structural errors which should have been avoided in a book so worthy.

ROBERT N. WILKIN
Cleveland, Ohio

AMERICAN GOVERNMENT UNDER THE CONSTITUTION.

By Paul C. Bartholomew. Dubuque, Iowa: Wm. C. Brown Company. 1947. $3.00. Pages 309.[1]

Mark Twain said that while he was on his way to Nevada to become secretary to his brother, the Governor of the territory, he relieved the tedium of the long stagecoach journey by reading the United States Revised Statutes and wondering how the characters would turn out. In somewhat the same frame of mind I began this manual. As I read, however, I found an interest other than wondering how the characters would turn out.

While Dr. Bartholomew has not done a perfect job, he has done the best of its kind that I have yet seen. He has wisely and refreshingly re-

1. This book is produced by a process similar to that used by the Chicago daily newspapers during the strike. It is bound in paper covers.

frained from writing a polemic. He has attempted, and in the main succeeded in, outlining the basic facts which every citizen should know about our federal, State and local governments. If any lawyer, who has read widely and reflected much upon these subjects, should attempt to set out his residuum of factual knowledge, the result would be not far different from Dr. Bartholomew's exposition. That is true in my case at least; I am glad that I have delayed in attempting to set down for personal reference what I know of these subjects. Dr. Bartholomew has relieved me of most of the labor; all that remains to be done is to annotate his work in the rare instances when it is inadequate or not entirely accurate.

First given is the background of the Union: the colonial governments, the Continental Congress, the Articles of Confederation and the State constitutions. There follows a brief description of the work of the Constitutional Convention, the plans proposed and the compromises adopted; this is supplemented by a discussion of the fundamental principles of the Constitution. Then comes, perhaps a little out of place, a description of the function of political parties in government.

The next is the longest and by far the most important part of the work. Each clause of the Constitution and all amendments are separately considered, and their meanings as determined by the Supreme Court set out. This, of course, was a difficult task and it is not surprising that in it Dr. Bartholomew has not entirely succeeded. It is remarkable that there are not more factual errors. The minor errors I caught were mostly inadvertencies. At one place the jurisdictional amount in diversity of citizenship causes in the federal Court is stated to be "at least $3000.-00"; however, when removal is discussed it is correctly placed at "over $3000.00" (page 132). The Court of general jurisdiction of the District of Columbia is referred to by its former name, "Supreme Court", instead of its present title, "District Court" (page 88). A typographical error or an inaccuracy of language results in describing a limitation upon universal manhood suffrage as "a literary test" instead of a literacy test (pages 176, 178). If this had been literally true, the result might have been startling.[2]

There is, however, one error of fact. It is stated that an indigent accused will be provided with an attorney "who will serve either without compensation or at government expense" (page 164). Unfortunately there is no provision in the federal statutes either for a public defender or for the payment of compensation to or the expenses of an attorney appointed to defend one who cannot otherwise obtain counsel.

In a succinct treatise of this type it is not to be expected that all of the niceties of constitutional development will be noted. To a surprising extent, however, that has been done. If on the one hand the full impact of the *Esquire* case[3] on the Postmaster General's power over mailable matter is not given recognition, on the other there are unusually accurate statements of recent pronouncements upon such intricate and dissociated subjects as the measure of damages in eminent domain cases and the extent to which the federal Bill of Rights has been made effective against the states by the Fourteenth Amendment.

In another edition it would be well not to treat constructions of the Constitution in opinions rendered more than two decades ago as static, but to suggest the present trend of the Court.

Supreme Court cases are cited merely by name; footnote-phobia should not prevent the addition of volumes and pages. State cases are sometimes cited merely by giving the volume and page where they appear in the reporter system. This fails to inform the reader of the Court that decided the case.

Because of the lack of uniformity the discussions of State constitutions, of State governments, and of local governments, are necessarily far more general than the exposition of the federal system. Of especial importance, however, is the description of the various forms of municipal government—the mayor-council plan, the commission plan, and the manager plan. It is in his advocacy of the manager plan that Dr. Bartholomew permits himself the widest editorial latitude.[4]

Dr. Bartholomew writes primarily for college and university students. His work, however, has a far wider potential field of usefulness. It should be a welcome refresher to lawyers, an excellent reference work for editors and a valuable text book for adult education in citizenship.

W. P. A.

THE NEW FOUNDATION OF INTERNATIONAL LAW. *By Jorge Americano. New York: The Macmillan Company. 1947. $2.50. Pages 137.*

International law, says Dr. Americano, is a failure, and now is the time for a wholly fresh approach. To sketch such an approach is the task set for himself by the author, who is Professor of Law in the University of Sao Paulo, Brazil, and a member of the Permanent Court of Arbitration. The system of law which he outlines bears little resemblance to international law as it now stands or as it seems likely to be in the foreseeable future.

Existing international law, in the author's opinion, lacks any basis of principles of justice and has had little equity in its application. He therefore sets it aside and proceeds to propose a new system based on the experience of domestic law: it is indeed "private law writ large". Such a regime is to operate not only on states but also on individuals. Its cornerstone is the Atlantic Charter—which the author considers to be

(Continued on page 336)

2. In reference to the Circuit Courts of Appeals: "The number of judges appointed to these courts vary from three to seven but in all cases the judges sit together on a case." (page 124). "The" is obviously a misprint for "three".

3. *Hannegan v. Esquire, Inc.*, 327 U. S. 146, 90 L. Ed. 586 (1946).

4. The difficulty in keeping a work of this kind up to date is illustrated by the fact that very recent changes have made inaccurate the description of the New Jersey Courts (See 34 A.B.A.J.; January, 1948).

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■ *The Present Crisis*

For the third time in the lives of many of us, the second time in the lives of even the youngest of the Bar, our country is gravely concerned by events which might bring the outbreak of another dreadful war. Anxieties and uncertainties such as we had hoped never again to experience have become uppermost in the hearts and minds of our people.

To lawyers and to all those who had come to look to law and law-made organizations as bulwarks of peace in the international order, the imminence of such a contingency brings a discouraging consciousness that again those cherished devices have not availed. While freedom-loving nations work together for peace and law, the menace of direct and indirect aggression has brought us to face again the necessity of being strongly prepared and ready to defend the institutions of freedom. A shocking price must be paid, and paid quickly, for the physical, mental and spiritual demobilization which has stripped us of defenses since hostilities ended. The eternal struggle for law and justice, fair play and the God-given rights of free men, must and will go on, as it always has, despite all set-backs.

Too much may have been said by some of our leaders; too little, manifestly, has been done. Such has been the mood, until lately, of leaders and people.

Events beyond control by our country have brought swift changes in policy, for us and for the nations of Western Europe which are hurrying now a belated federation for the common defense. When the first election in a faraway republic on April 19 can present the fateful issue of peace or war for all of America, security can rest only in the strength and preparedness of those who will stand, at arms if need be, against Communist philosophies. First we need at all hazards to strip Communists of power to do further damage in our midst.

Republican government and representative democracies lived and got along in the world with rampant Communism for the past thirty years. We have held to hopes that this could continue. The ascendancy of Soviet influence in Eastern Europe has been foreseeable; the aggressions in Western lands, and the infiltrations in our own country, have brought a grave uneasiness and a demand for "firm", "tough" policy. The United States has retained no territory won in war or as reward for victory; the Soviet Union has subjugated one little nation after another, in the guise of peace, and now threatens lands and peoples with which we have historic kinship.

America's fateful stand seems now to be that no nation, however great, shall be permitted to place itself by force in a position to dominate the continent of Europe, destroy free government in the major democracies, and gain the vantage-points, populations and resources for an assault, sooner or later, on nations in the Western Hemisphere. The resources and lives of our people seem to be committed to assisting those who are preparing to defend themselves and in so doing defend all of the Americas.

■ *"Object" of Our Association*

From a report to the House of Delegates on a controversial subject, chronicled elsewhere in this issue, we take the following statement concerning the province of our Association in the present tense:

> The times impose on the organized Bar new duties and new opportunities for leadership of informed public opinion. We are not living or carrying on our work in the era or mood of 1878. We cannot put in our own way the barriers and hurdles of narrow and ancient concepts of our objectives. Whatever goes to the heart of defending and maintaining our Constitutions, our laws, our form of government, and the right of men to live their lives in freedom from others' tyranny, must be within our Association's province unless we are to fail our country and ourselves.

"New occasions teach new duties." The ultimate ends for which our Association was formed are still stated, in Article I of its Constitution, in the terminology of 1878, with a supplement in 1936 only to bring in its representative and federated relationship to State and local Bar Associations "in the interest of the legal profession and the public throughout the United States".

Consideration has to be given, not only to the ultimates, but also to the means of promoting, preserving and defending them against present-day attacks from without and within our country. "The science of jurisprudence" cannot be advanced in a totalitarian world, whether Fascist or Communist. "The administration of justice" cannot be promoted in a legal climate of

positivist philosophy or arbitrary administrative discretion. "Uniformity of legislation and of judicial decision" cannot exist unless our representative form of republican government is defended and kept secure. "The honor of the profession" is destroyed, not upheld, by the inroads of collectivist doctrines. Law practice by "collectives", so vividly described in our March issue (page 191), is poor substitute for the individualism and the independence of the profession.

Whatever preserves and defends our Constitution and our laws, our Courts and their administration of impartial justice, the deliberative processes by which an alert and militant citizenry can maintain our representative form of government and our federal republic through restoring the exercise of our capacities for decentralized self-government, must be within our Association's province. Selections have to be made as to the tasks to which our Association will devote its limited funds and energies, but the power and right of the Association to decide and act by suitable means cannot be challenged, so long as its historic "object" is cherished.

■ *Opportunity To Make Known Your Views*

Our March issue contained (page 200) the text of the Draft Covenant on Human Rights, the Draft Declaration on Human Rights, and a summary of proposed Measures for Implementation, to be embodied in the Covenant. All of these documents are under consideration by the State Department of the United States and soon will be under revision by the United Nations Commission on Human Rights. Reported elsewhere in this issue are the actions voted by the House of Delegates on February 24, as to several of the measures and methods broached for giving international enforcement to the Covenant.

The attitude of the American Government as to these documents and proposals is being formulated. Their importance and consequences to our country and people are little understood but could hardly be overstated.

An expression of the views of individual American lawyers, as well as of State and local Bar Associations, on these subjects, would be timely and, if received in sufficient volume, might be effective. They should be submitted at the earliest possible moment, but we are informed that those received during May as well as April will be considered.

All members of our Association have thus an opportunity to express their considered views on matters of great moment. That is our Association's democratic process. Avowals of approval of or opposition to the Drafts in entirety may be significant, but hardly the most helpful. Specific criticisms and suggestions as to the text of the Drafts and the substance of the proposed Measures for Implementation can be useful. They may well be directed to the following questions, among others in the light of the actions voted by the House of Delegates:

Should there be created a new and separate International Court of Human Rights, in addition to the existing International Court of Justice?

Should there be created by the United Nations a permanent committee to receive, consider and act as to complaints or charges of violations of human rights, by or within a Member state?

Should the right to complain of violations of the Covenant be accorded only to states which have ratified the Covenant?

Should "individuals, associations or groups" also be given the right to file complaints or charges of violations of the Covenant, by or within a state?

Should there be a Covenant now, or should there be sought a Declaration of the Rights of Persons as a part of the international law of the future?

If there is to be a Covenant, what should be added to, omitted from, or changed in, the text of the present Draft?

Have you present comments as to the Draft Declaration (although that may be of less urgency than the other matters)?

What should be the attitude of the Government of the United States toward any or all of these matters?

Here is an opportunity to express your considered views in time. Communications on the subject may be sent to James P. Hendrick, Acting Associate Chief, Division International Affairs, State Department, Washington, D. C., with a copy to Dr. Louis B. Sohn, Harvard Law School, Cambridge, Massachusetts, for analysis and compilation, to assist and guide our Association's Committee.

■ *Laymen as Practitioners in a Federal Court?*

H.R. 3214 in the form in which it passed the House of Representatives needs an important amendment. The bill contains desirable revisions of Title 28 of the United States Code, entitled "Judicial Code and Judiciary". Among other things, it would make the United States Tax Court a federal Court, whereas in 1942, when the name of the Board of Tax Appeals was changed to the Tax Court, it remained an "independent agency in the Executive branch of the Government."

If the Tax Court is now to be made a part of the federal judiciary, its powers as to persons who practice before it, etc., should be those of other Courts. However, just before H.R. 3214 passed the House under a suspension of the rules and limited debate, the following amendment was slipped into it:

> No qualified person shall be denied admission to practice before such Court because of his failure to be a member of any profession or calling. (Section 2560, page 157, lines 12-14 of the Bill)

Should the Congress compel a Court to permit laymen to practice before it? Unless lawyers and other citizens let their views be known quickly to their Senators and Congressmen, there is danger that this retrogressive provision will not be stricken out before final passage.

■ *What Shall Be Done About the "Veto"?*

Questions as to what, if anything, shall be done to abolish or limit the abused provisions of the United Nations Charter as to unanimity of action in the Security Council on the part of the five Principal Powers have come to the fore again, this time in the Interim Committee ("Little Assembly") at Lake Success, with a report of a definitive plan due from a seventeen-member committee May 15. The time is opportune for the earliest possible expression of views by individual members of our Association, and by State and local Bar Associations, for the assistance and guidance of our Association's Committee for Peace and Law Through United Nations, which is re-examining the subject and is likely to formulate recommendations to be supported by our Association.

Argentina has come forward with essentially the proposal which was broached first, we believe, in the columns of the JOURNAL last August ("If 'Two Worlds': What Can United Nations Do for Majority Action", 33 A.B.A.J. 756, 758; August, 1947). Declaring that their acceptance of the "veto" in the Charter in San Francisco committed the smaller states to a "pact of eternal slavery", Argentina made the drastic proposal that an amendment eliminating the "veto" outright be drawn and submitted to the Member states for ratification. If ratified by two-thirds of them, any dissenting state would be left with "the alternative of accepting or of withdrawing from the UN Organization", in which event the ratifying states could proceed with what would be technically "a new United Nations free from the pressure of the veto". Argentina proposed a conference under Article 109 of the Charter to draft and effectuate such an amendment, although it could be drafted and submitted without calling a conference (Article 108 of the Charter; see 33 A.B.A.J. 756, 758; August, 1947).

Four other proposals by Members have been submitted; many of the smaller states have denounced the "veto" or the abuse of it by Russia. Canada and the United States have announced that they are not prepared to support an amendment of the Charter. The American approach, as explained by Dr. Philip C. Jessup, is to try to get the Security Council to "liberalize" its use of the "veto". He proposed this as to some thirty-one specific points, which self-restraint would, he said, eliminate nearly all of the twenty-three instances of use of the "veto", including ten as to additional memberships in the United Nations and generally those arising under Chapter VI of the Charter as to "the pacific settlement of disputes". He thought that unanimous action by the Principal Powers should still be required for actions involving the use of force or sanctions against aggressions or threats to peace. The American proposals would depend largely upon their acceptance by the Soviet Union and its satellites; their rejection would virtually compel the consideration of some such proposal as that of the Argentine.

Members of our Association, or State or local Bar Associations, wishing to express their views or suggestions as to the "veto", are invited to send them to Dr. Louis B. Sohn at the Harvard Law School, who will analyze and compile them for presentation to the United States Delegation and the assistance of our Association's Committee.

An Opportunity for Public Service

Members of our profession have an opportunity, and a vital sense of duty, to offer the services of well-qualified and judicially-minded lawyers for appointment as Hearing Examiners under the Administrative Procedure Act (see our March issue, page 179). Fully one hundred Examiners will be chosen from among applicants not in regular Civil Service status as Examiners for federal agencies. The salaries will range from $6,000 to $10,000 a year, with few below $7,000.

These positions should be attractive to practicing lawyers, law teachers, State agency members and staffs, and even to State Court judges in some States. There are numerous applicants who are now employed by federal agencies, and it is highly desirable that qualified lawyers in all parts of the United States shall offer themselves for these posts, which are important and should be attractive to men who have aptitude for judicial work. It would be unfortunate for the public interest if the selections had to be made preponderantly from lawyers now employed by federal agencies. The abuses of power in some of the agencies led to the remedial legislation. The purpose of the latter would be thwarted by "stacking the deck" with men unsympathetic with its aims.

No less important than the availability of lawyers of mature experience and tested independence, when appointments to the bench are being considered, is now the availability of straight-thinking and fair-minded lawyers as Hearing Examiners. The latter perform judicial or quasi-judicial functions which often equal and at times transcend in importance the run-of-mine work of judges. There is, we believe, a *bona fide* opportunity to secure appointments of high grade for these Examiner posts, provided the number and quality of the applicants enable the Board of Examiners to fulfill that service to the profession and the public. Details as to applications were in our March issue (page 180). If the Bar wishes Examiners who are impartial and detached from agency arbitrariness, the first step is to see to it that men of that type submit themselves for appointment.

"Doing Something for Lawyers"

The House of Delegates on February 24 gave hearty and unanimous approval to the efforts being put forth through two Sections of our Association, several local Bar Associations, and the JOURNAL (33 A.B.A.J. 302, April, 1947; 33 A.B.A.J. 1001, 1005, October, 1947; 34 A.B.A.J. 92, February, 1948) to remove federal tax discriminations, as to pension and retirement plans, now operative against members of professions, partners, and sole proprietors, in unincorporated businesses. The development of definite proposals "as soon as practicable" was made a joint task of the Section of Corporation, Banking and Mercantile Law and the Section of Taxation. The Sections "got busy" within the week.

The Resolution offered by the first-named Section and adopted by the House was as follows:

> WHEREAS, great interest has been aroused not only in the legal profession but in other professions and occupations by proposals that legislation be enacted to end or lessen the tax inequities now faced by partners and sole proprietors in the matter of pension and other retirement plans; and
>
> WHEREAS, the Section of Corporation, Banking and Mercantile Law and other agencies have been studying methods of extending provisions in the tax law applicable to corporate employees in order to remedy this situation, and various suggestions have been made for this purpose;
>
> RESOLVED, that the American Bar Association authorizes and directs the Section of Corporation, Banking and Mercantile Law and the Section of Taxation to study the subject and recommend a definite proposal or proposals to this Association, as soon as practicable.

The comment has been made in some circles, even in our own Association, that this project should not be undertaken because it involves "doing something for lawyers". That is so, but it is hardly a grievous fault. Our Association does much for the public, but it also has worked actively in the interests of our profession and its members—even their financial well-being.

As a matter of fact, the proposal originated in a Section committee studying the legal problems affecting non-corporate forms of business organization (33 A.B.A.J. 302; April, 1947). It has been taken up by associations representing several professions as well as those representing individual proprietors and small businesses. The Association of the Bar of the City of New York has convened several meetings of those cooperating groups (34 A.B.A.J. 92; February, 1948). Lawyers and law firms will be among the beneficiaries of the removal of the present discriminations, as will the members of other professions and the owners of unincorporated businesses. Our Association fosters the interests of lawyers only where, as here, they are compatible with the interests of the public.

Court Criers "By the Day"?

Whatever pertains to the day-by-day workings of the Courts of the United States is of continual interest to members of the profession of law. Occasionally issues arise in connection with appropriation bills in the Congress which give an occasion for telling about some angles of the operations of the federal judicial system. A function and privilege of the JOURNAL, from its founding, have been to bring these to the attention of the Bar.

To some of the profession, and perhaps to more of the public, the Court "crier" may be regarded as an archaic personage, hardly indispensable to the modern administration of justice. Yet in a traditional institution such as the judiciary, titles are preserved but functions are expanded and changed, often with little realization of it on the part of litigants or lawyers. The appropriation bill for the federal judiciary along with the Departments of State, Justice and Commerce (H.R. 5607), as passed by the House of Representatives on March 5, conformed measurably to the estimates submitted by

the Judicial Conference of Senior Circuit Judges and will enable the general plan of the estimates to be carried out, except in one respect, viz., the treatment accorded the provision for attendants upon the judges during the performance of their judicial duties, whether in Court or chambers, known variously as criers, bailiffs, or messengers, and sometimes as crier-bailiff-messengers. Whatever they are called, they have the function of personal and faithful service to the judge, carrying out his directions, helping to keep order in the courtroom, running errands in the courthouse, performing for him many small routine duties which come up, and doing these things in such a way as to save his time and enable him to concentrate on his judicial work.

The House bill struck out the provision for such attendants for the Circuit and District Judges. Instead, $200,000 of the $5,310,000 appropriated for marshals under the Department of Justice is designated for "the employment of temporary deputy marshals, in lieu of bailiffs and criers, at a rate not to exceed $10 per day". The House Appropriations Committee in reporting the bill said that it did not believe that the criers (such as they are termed in the basic Act providing for them—28 USC, Supp. V, 9) "serve a vital function in so far as the operation and efficiency of the Court is concerned". The Committee said that such of their services as "are essential to the proper functioning of the Courts" can be provided for out of the appropriation for marshals. "Should this limitation of $200,000 prove inadequate," the Committee added, "justification for an increased amount can always be presented to the Committee." The total estimate in the sum of $5,310,000 for salaries and expenses of marshals, covering a wide variety of services, is not increased; and there would not appear to be any place in the appropriation from which the $200,000 can be used for criers without interfering with other purposes. Really, no saving is involved; if the plan of the bill is retained, a substantial additional appropriation for marshals will doubtless be needed in the coming year.

The matter may appear to be in no sense major, but the change is open to objections in principle. Deputy marshals to perform the duties of criers could be employed only on a *per diem* basis, for the days they work. This does not give the assurance of a dependable income to attract capable and dependable men. Their selection would be by the Department of Justice, and taken away from the judges. These attendants upon the judges, both of the Circuit Courts of Appeals and of the District Courts, stand in such an intimate relation to them and are bound to become possessed of such confidential information that their loyalty to the judges is of the first importance. Anyone who has had judicial experience knows how indispensable are these adjutants and this relationship.

The House Committee has gone back to essentially the plan which was in force some years ago and then was discarded because it did not work well. The functions of crier-attendants upon judges were supposedly performed by deputy marshals or bailiffs assigned to that work by the marshals and paid upon a *per diem* basis for the days on which the judge was present in Court or chambers. The only difference is that the maximum daily rate allowed is increased from $6 to $10. The plan proved thoroughly unsatisfactory. The compensation of the bailiffs assigned to the judges was uncertain and upon an annual basis inadequate; the judges felt that the first loyalty of the bailiffs was to the marshals who appointed them rather than to the judges. The Congress did away with the system in December of 1944 (28 USC, Supp. V, 9).

Appropriations for criers to be chosen by the judges they serve were made for the fiscal years 1946, 1947, and 1948. Under the 1944 Act, criers have been provided for the majority of the Circuit Courts of Appeals and approximately two-thirds of the District Courts. For the judges who have obtained criers under the appropriations, the provision has enabled them to feel a security in the service of their appointees. The stable, although only moderate, annual salary has enabled the judges to secure satisfactory men for the service. The difficulty has been the failure to appropriate enough money to provide criers for all of the judges who believe they need them.

The Judicial Conference asked for $468,000 to fulfill the 1944 law, for the fiscal year 1949. The appropriation bill in its present form would repeal the statute, at least for the time, by refusing the money to carry it out. The consensus among the judges is general that such a return to the discarded system would be hampering to the judges in their judicial work and would be detrimental to the efficiency of the Courts. Consequently a request has been made to the sub-committee of the Senate Appropriations Committee, in behalf of the Judicial Conference, to restore an appropriation on the statutory basis.

Few people realize that for all of the Courts of the whole United States—the judges, the devoted and diligent staffs of the Courts, the personnel and machinery of justice according to law—the total annual appropriation is only $18,785,100—a very small sum as compared with the cost of some other branches and agencies of government and with the billions of cost of the federal government as a whole. The Department of Justice itself receives $116,330,700—more than six times as much as all the Courts. Members of the Bar throughout the country will feel that adequacy of appropriations for the judicial establishment is fully warranted by the economies which are sought continually by those who administer it.

Editor to Readers

With lovers of liberty everywhere shocked and shaken by the tragic death of Jan Masaryk, Foreign Minister of Czechoslovakia, and the world thereby brought nearer to awareness of inevitable crisis, the event has vivid implications for those who had seen the gay-spirited, wise-cracking Masaryk in action, in connection with the United Nations. His decision to end his life and thereby to dramatize the folly and failure of his and the world's supposed statesmanship, must have brought strong emotions to any honest-minded in our midst who pursued to a perilous point the same fatuous course. Of him it should be said, as Shakespeare wrote in *Macbeth,* concerning the former Thane of Cawdor: "Nothing in his life became him like the leaving it".

* * * * *

Masaryk was an archetype of those who staked their own and the world's future on belief that a freedom-loving, industrialized nation could "get along with" Russian and the Communist bid for world domination. He even talked glibly about the wisdom of learning and appropriating from both Slav collectivism and western democracy. Jan Masaryk was much like many Americans and knew this country well; he had worked menially in Brooklyn and had been much with his noble-minded father while some of us were helping the latter create the public or political opinion to persuade Woodrow Wilson to insist in the Peace Conference that a new country be created as a bastion of democracy at the edge of the Balkans. He liked to think that his people were "the Yankees of mid-Europe" and that they could adopt or adapt some collectivist methods without endangering their liberties. At the San Francisco Conference in April-June of 1945, he was much at home with others who thought that at least America could work with Stalin and together keep peace and freedom in the world. Even then he seemed to some a little over-ready to be the bearer of messages and ideas that furthered the tactics of Molotov. There came the time in those stirring weeks when the spearhead of American troops was within about fifteen miles of the Nazis in Prague, while the Russians were a hundred miles or more away. There followed the fateful decision to hold our troops on German soil until the Red Army "liberated" Prague as it did Berlin. Somehow we thought then of a phrase, in February made the title of a public-relations novel (*Prematurely Gay;* by Jack Iams; Morrow Co.).

* * * * *

In early days of the United Nations and at least until last Autumn, he seemed to hold fast to professions of confidence that Communist minorities could not penetrate and seize control of highly developed countries such as his own, although at times he guardedly admitted an increasing anxiety over the placing of servile champions or "Soviet friendship" in key places in his government. When last we saw him in the lounge at Lake Success, we thought he had become bitter that his program had not worked as he had hoped, resentful that American opinion was turning away from his policy of appeasing Russia but was doing nothing to hold his country for the West, disturbed that Communist infiltrations into high places might lead to minority domination rather than cooperation, troubled as to his own future in the land to which he was returning, fearful that the die had been cast and that his country had no choice except to yield to Russia. Back on his native soil and grieved by ominous events which came swiftly to climax when legislators and public officials who had fought Communism with all their might had to bow to it and vote for it as the price of life for themselves and their loved ones, Jan Masaryk probably had no fortitude to fight to the death against the tragic fate which he had helped to visit on his unhappy country. So we see him last at the grave of his beloved father in late afternoon, standing with bowed head and emotions which must have been such as few men experience, and then walking away into the shadows—and to death. Those in our midst who have preached and practiced Masaryk's philosophy of government and have placed or tolerated avowed or furtive Communists in high posts in government, schools and colleges, agencies of public opinion, labor organizations, propaganda groups, can hardly mistake the grim warnings brought home to us by Masaryk's life and death. He dared to die for things for which he did not live.

* * * * *

We announce that the members of the Advisory Board will meet in Seattle, Washington, at the Washington Athletic Club, on Tuesday, September 7, at 12:15 o'clock, for luncheon and conference following. The question of a convocation of such members of the Advisory Board as can be in Washington, D. C., during the week of the meeting of the Board of Governors and the American Law Institute, is held in abeyance. Members of our Association should be grateful, as is the Board of Editors, for the invaluable service which members of the representative Advisory Board render as to questions of JOURNAL policy which are submitted to them for opinion and suggestions. Members of the Board in a particular State or area are also asked from time to time for assistance or advice as to material of particular interest in that State or area.

* * * * *

To what extent do lawyers participate nowadays, as counsel or as arbitrators, in arbitration proceedings? At the meeting of the Association of the Bar of the City of New York, John T. McGovern, Chairman of its Committee on Arbitration, gave the results of considerable research, principally among the case files of the American Arbitration Association. More than 27,000 cases were checked. For the year ended December 31, 1926,

the parties to 36 per cent of the arbitrations were represented by lawyers. By 1938 the percentage had gone up to 70 per cent. In commercial arbitrations, there was lawyer participation in 80 per cent of the cases in 1942 and in 82 per cent in 1946. In labor arbitrations, the parties were represented by counsel in 84 per cent of the cases in 1942, in 91.7 per cent in 1945, and in 91.6 per cent in 1947. In commercial cases in New York, where specialists in the particular trade or business are often chosen as two of the panel, 21 per cent of the arbitrators are lawyers; in labor cases, 61 per cent of the arbitrators are lawyers. Many of the trade and industry arbitration agreements have eliminated their one-time provisions against the representation of parties by counsel.

* * * * *

The February issue of the *Journal of the American Judicature Society* (Vol. 31—No. 5) declares that next September 15 the people of New Jersey "will exchange America's worst Court system for the best", and that in adopting the State's new Constitution, the voters of New Jersey "moved their State, so far as the machinery of justice is concerned, from the foot to the head of the class". So far as this department is concerned, we do not go along with either hyperbole, highly as we regard what was accomplished in New Jersey. With all deference to others' opinions, we still look on New Jersey's historic judiciary system as by no means "worst"; on the contrary, its veneration for law, precedent, and the substance of justice would have lead us to put New Jersey in the top one-fourth among the States. That it will be still better, under the leadership of Chief Justice Arthur T. Vanderbilt and the new rules he is drafting for its Courts, we have no doubt. This should inspire the great challenge, to all States: "The better or best can be further improved"—*it can be done!* The *Journal* of the Society usefully devotes much of its February issue to more of pragmatic material, as to the steps in the New Jersey triumph, than we can find space for in our columns.

* * * * *

Lawyer-veterans and "white-collar" folks are not the only ones who find themselves in desperate straits because of housing shortages. Even Courts share their plight. In the January issue of the *Los Angeles Bar Bulletin*, Presiding Judge Ray Brockman of the Municipal Court writes on "The Hobgoblin of Scattered Courts", and starts with this plaint:

Oh where, oh where
Has the Municipal Court gone?
We must find it to earn our fee.
With a judge perched here
And a judge perched there,
We cain't figger out whar she be.

The Superior Court in Los Angeles has a similar housing problem, as is attested by Judge Samuel R. Blake's article in the same issue. If all this is true in expansive Los Angeles, what can be the situation as to housing and repair for courtrooms in more restricted communities?

* * * * *

The alertness of our readers in all parts of the country often has consequences. In our January issue, we published at page 1 the text of proposed constitutional amendments recommended to the House of Delegates by the Association of the Bar of the City of New York. One of these provided that "the Chief Justice of the United States and each Associate Justice of the Supreme Court shall retire at the end of the term of the Court during which he shall attain the age of seventy-five years". Levin Smith, of Parkersburg, West Virginia, wrote to the JOURNAL: "What if he becomes 75 years old at a time which is not within a term of the Court?" The Chairman of the New York Committee found that the point was well taken. So, when the House of Delegates on February 24 endorsed the proposed amendments as reported elsewhere in this issue, the Chairman of the Committee on the Judiciary asked that this be done on the basis of a change in wording to meet the point made by Mr. Smith.

* * * * *

Some members of the House of Delegates were considerably surprised to hear, on February 23, an argument advanced in a debate, to the following effect: "At the time we were elected as delegates by our State Associations or by American Bar Association members in our States, the question now being debated had not been actively discussed by the Bar or people; and we received no instructions from our members on the subject. So we have no business voting on such a question". This challenge of the basic principle of representative government was not sustained by the House. The obvious consideration is that all members of the House of Delegates are chosen to exercise their best judgment on whatever matters come before the House. When Bar Associations or individual members within their constituency wish to express views to their delegates, they do so; but the principle of delegated representation and responsibility is maintained. The first review in "Books for Lawyers" in this issue is pertinent to the particular subject and to broader issues.

* * * * *

A very different view of Howard Whitman's article in the February *Woman's Home Companion* and that magazine's far-flung, full-page advertisement of "Black Robes", from that taken by the New York State Bar Association and many others (34 A.B.A.J. 175; March, 1948) is given in the February issue of the *Journal of the American Judicature Society* (Vol. 31—No. 5; page 132). Recognizing the force of Mr. Whitman's report that he found, throughout the country, along with the wise and learned judges, "a shocking—almost unbelievable—number of incompetents, idlers, tyrants, political hacks, knaves and bunglers", and accepting Mr. Whitman's statement (now challenged in some details) that

on a tour of the country to investigate reports of low-grade judicial service, he found on the bench men who regularly sleep in Court during trials, alcoholics who have to be escorted to their homes by Court attendants, mental incompetents in worse shape than some of those they commit to asylums, judicial tyrants to whom the power of the bench is an outlet for sadistic impulses, judges so old or ignorant of the law that they are dependent upon their secretaries or their colleagues to write their opinions, and others so indifferent that they think nothing of leaving the courtroom in the midst of a trial to smoke a cigarette, the straight-thinking *Journal* of judiciary reform says that

> Those of us who are interested in elevating the Courts and the administration of justice in public esteem will not shrink from facing facts, no matter how unpleasant, that have a bearing on the right of the judiciary to the people's respect, but at the same time, to preserve our sense of proportion, we must bear in mind that the same sort of article could be written about clergymen, congressmen or any other group of public servants. Any robe will look shabby when its seamy side is exposed to view.

* * * * *

The *Journal* of the Judicature Society reminds us of the fact, overlooked in our March article, that Mr. Whitman recently wrote for the same national magazine an article on "Disease a la Carte", which exposed unsanitary conditions in restaurant kitchens. Republished in the *Reader's Digest,* innumerable local campaigns to clean up dirty public-service kitchens resulted, and many lives were saved. "The impact of 'Behind the Black Robes' is bound to be tremendous," the *Journal* frankly recognizes, "whether or not it makes the *Reader's Digest,* as it is very apt to do, and the bench and Bar in every part of the country may well reflect upon what should be said or done about it."

* * * * *

We still think that the admonitions of our March article (page 175) that advocacy of the "Missouri Plan" need and should not indict our judiciary system, was and is sound; but the *Journal* of the Judicature Society takes the most positive stand that

> It is our suggestion that in every community in the land the public relations committee of the local Bar assume responsibility for seeing that the publication of this article is seized upon as the occasion for addresses on the radio and before local audiences and for articles and editorials in the local press commenting on the local judiciary. These speeches and articles may be highly laudatory and yet give the occupants of the bench no more than their just due. At the same time, no better occasion can be found for pointing out the occupational hazards to which judges are subjected by the elective method of selection, and in the numerous States where judicial selection reform campaigns are in progress, Bar committees can, without being in the least unfair to their judges, take advantage of the article to add momentum to their cause.

* * * * *

There was stalwart doctrine on a number of controversial subjects in the talk which President Charles Seymour of Yale University gave on February 23, the university's 31st alumni day. In discussing plans for meeting the needs, he said that "It seems to me that we should imperil the independence of the university if we accepted the policy of seeking Federal or state funds in any way to meet current expenses. If we once put ourselves in the position of dependence upon government financial assistance, our freedom is lost". Of course, so bold a position can be taken only by an institution which is heavily endowed, but the principle declared as to federal aid has significance. Next he declared that "You cannot legislate a spirit of tolerance through an anti-discrimination bill any better than you could legislate sobriety through a constitutional amendment". Finally, he expressed the opinion that to increase greatly the number of college students would endanger the quality of the whole educational fabric. "We ought to improve the quality of the education we give before we try to expand it", he said. "If such sums of money [$2,000,000,000 has been suggested by President Truman's Committee on Educational Needs] are to be available let us first put them in our public schools, where the need for more and better teachers is crying to Heaven".

MANUSCRIPTS FOR THE JOURNAL

■ The Journal is glad to receive from Association members any manuscript, material, or suggestions of items, for consideration for publication. Preponderantly, our columns are filled with articles planned and solicited by members of the Board of Editors or Advisory Board or written by them; but each issue contains articles selected from those submitted to us by others. With our limited space, we can publish only a few of those submitted; but every article we receive is considered carefully by members of the Board of Editors unless for some reason it is plainly unsuited for our publication. Articles in excess of 3000 words including footnotes cannot ordinarily be considered; exceptions are sometimes made as to solicited contributions. "Letters to the Editors" of not more than 250 or 300 words on topics of interest to the professions are especially welcomed. The facts stated and views expressed in any article identified with an individual author are upon his responsibility.

As the work of the Board of Editors is carried on by men who are widely separated in distance and busy in their own professional pursuits, time often elapses before a decision can be made as to whether a proffered article is acceptable and space can be made available for it. We cannot assure that submitted manuscripts not accepted will be returned, although that may usually be done.

THE PRESIDENT'S PAGE

TAPPAN GREGORY

■ The submission of the following notes is by request.

I spoke at two meetings with the approval of the President before the Annual Meeting at Cleveland.

August 8, 1947, Birmingham, Alabama.

Before the Civitan Club at lunch.

At dinner in connection with the annual meeting of the Alabama State Bar.

September 12, Santa Cruz, California.

Annual meeting of State Bar of California. Participation as member of panel on Legal Education.

September 30, New York City.

Conference on the Citizen's Participation in Public Affairs under the joint auspices of the American Bar Association, the American Political Science Association and the School of Law of New York University.

October 4, St. Louis, Missouri.

Annual meeting of the Missouri Bar.

October 13, Chicago, Illinois.

Morning, address of welcome at Traffic Court Judges' and Prosecutors' Conference held at Northwestern University School of Law.

Lunch, presided at joint meeting of the Chicago Bar Association and the American Bar Association Section of Corporation, Banking and Mercantile Law.

October 14, Chicago, Illinois.

Lunch, at Chicago Bar Association, of Traffic Court Judges and Prosecutors.

October 17, Las Cruces, New Mexico.

Annual meeting of the State Bar of New Mexico.

October 20, New York City.

Address of welcome, International Bar Association.

October 21, New Haven, Connecticut.

Dinner in connection with the annual meeting of the State Bar Association of Connecticut.

October 22, New Haven, Connecticut.

Before the Kiwanis Club at lunch.

Before the New Haven County Bar Association after dinner.

November 6, Chicago, Illinois.

Conveying greetings from American Bar Association at dinner of Mid-Continent Trust Conference of the Trust Division of the American Bankers Association.

November 7, Chicago, Illinois

Joint dinner of Chicago Bar Association and Illinois State Bar Association to the Supreme Court of Illinois.

November 20, Omaha, Nebraska.

In the afternoon, speech to the Nebraska State Bar Association.

Dinner in connection with the annual meeting of that Association.

November 25, Piqua, Ohio.

Dinner of the Miami County Bar Association tendered to

November 26, Columbus, Ohio. "Nineteenth Century Lawyers".

Lunch, Columbus Bar Association.

In the afternoon addressing the Student Bar Association at the College of Law of Ohio State University.

December 3, Indianapolis, Indiana.

Dinner at Indianapolis Bar Association.

December 10, Seattle, Washington.

Joint dinner of the Seattle Bar Association and Seattle Medical Society.

January 9, 1948, Wilkes-Barre, Pennsylvania.

Dinner in connection with Mid-winter meeting of Pennsylvania Bar Association.

January 16, Oklahoma City, Oklahoma.

Lunch of Chamber of Commerce Friday Forum, participated in by Oklahoma County Bar Association in connection with its Legal Institute.

Dinner of Oklahoma County and Oklahoma Bar Association.

January 17, Tulsa, Oklahoma.

Dinner of Tulsa County Bar Association.

January 24, New York City.

In the afternoon, speech to New York State Bar Association at its annual meeting.

January 31, Baltimore, Maryland.

Dinner in connection with Mid-winter meeting of Maryland State Bar Association

February 6, Manchester, New Hampshire.

Dinner in connection with Mid-winter meeting of the Bar Association of the State of New Hampshire.

February 11, New York City.

In the morning, speech to the Trust Division of the American Bankers Association at its Mid-winter Trust Conference.

March 9, Washington, D. C.

Speech after dinner at meeting of the District of Columbia Bar Association to celebrate Bar American Bar Night.

Lawyers *in the News*

Richard M. NIXON

▪ A lawyer who has lately been much in the news and has conducted himself capably, according to general impression, in one of the most controversial and difficult of legislative positions, is the 35-year-old newcomer to Congress from the 12th California District, which includes a part of Los Angeles County. As a member of the House Committee on Un-American Activities and as Chairman of its Sub-committee charged with the difficult task of considering and drafting legislation to curb Communism and Communists (see 34 A.B.A.J. 193; March, 1948), he has gone about his work in a quiet, unsensational way that reflects the habit of the trained lawyer.

NIXON was born in California and was in 1934 an honor graduate of Whittier College in his native State and home town of Whittier, and of the Duke University Law School in 1937. During World War II he served more than three years with the Navy and saw considerable combat service in the South Pacific. While still in the service NIXON determined, in response to a request made by a district-wide committee of citizens, determined to make the race for election to Congress against long-entrenched "Jerry" Voorhis. He won easily the Republican nomination to the office. He then challenged Voorhis to a series of debates throughout the district. These platform meetings of the two antagonists, both able speakers, stirred interest to the point where the 1600 seat San Gabriel Mission Playhouse, in which the last of the series of debates was held shortly before the November 1946 election, was not large enough to accomodate all who sought admittance. Although he carried the fight to his opponent sponsored by such elements as the PAC, the odds were recognized to be against his election. NIXON had trailed Voorhis in total primary votes cast by more than 7000. When the votes were counted, his forthright stand on controversial issues had brought him a winning margin of 15,594 votes, a greater majority than that achieved by any of California's other six new members of the House. Perhaps as a consequence he was the only new member of California's 23-man delegation to receive two Committee appointments – Education-Labor and Un-American Activities.

As a member of the House Committee on Education and Labor, he played a considerable part in drafting and supporting the Taft-Hartley Labor-Management Relations Act of 1947. Throughout the hearings and debates on this measure, he was regarded as advocating a consistently "middle-of-the-road" approach which would not discriminate against individual workers but which would serve the best interests of the general public as well as those of both management and organized labor. He took a leading part in the Committee's interrogation of such labor leaders as John L. Lewis, James C. Petrillo and William Green, seeking with persistence to elicit their aid and cooperation in the Committee's business rather than their antagonism.

As a member of the Un-American Activities Committee, he has devoted himself to tasks of exposing subversive activities and individuals in this country, at the same time steadfastly insisting that the right of individuals to protection from persecution be recognized. He distinguished sharply between the true liberal and the subversive, recognizing the former as a contributor to democratic progress and the latter as an enemy of the United States. As chairman of a sub-committee, he conducted the hearing involving the Communist agent, Leon Josephson, which ultimately led to the latter's conviction on a contempt indictment in the United States District Court. As chairman of another sub-committee, he is currently engaged in the difficult task of drafting legislation for Congress to approve which will effectively curb the activities of foreign agents in the United States and make them liable to punishment they are now able to evade through the protection afforded them by the laws of the nation they seek to destroy. In this study of effective legislation, he has sought and obtained the views of spokesmen for our Association and other Bar organizations (34 A.B.A.J. 193; March, 1948).

As a member of the select Committee on Foreign Aid, commonly known as the Herter Committee, he made last year an extensive study of European economic conditions. Named to the sub-committee which specialized in a study of Italy, Greece, and Trieste, he departed from the supposed procedure by interviewing on his own initiative numbers of business men, labor leaders, workers, farmers, and opposition political leaders, including Communists. He was thus able to form a picture of conditions which was uncolored by what was told him by government officials, and he had the opportunity to hear directly from the people their economic and political opinions. Back in the United States he

took on a strenuous schedule of public meetings and radio addresses, to tell the people his observations and findings in Europe, seeking thereby to develop informed public opinion in support of a realistic program and to counteract isolationism, apathy and Communist opposition to American aid for European recovery.

All things considered, it is hardly surprising that this hard-working, hard-hitting young lawyer, was chosen last January by the United States Junior Chamber of Commerce as one of the ten outstanding young men of the whole country.

Intermittently, he still practices law in the attractive little city of Whittier, as a member of the firm of Bowley, Knoop and Nixon; but he seems likely to be kept busy in other pursuits for awhile.

Charles F. WENNERSTRUM

■ The Chief Justice of the Supreme Court of Iowa, member of our Association since 1922, who was appointed by President Truman as a member of one of the important tribunals to try Nazi war criminals (see 33 A.B.A.J. 607; June, 1947) was back in the news in late February and early March because of his outspoken comments on the trials or the manner in which cases were prosecuted. After the Court over which he had presided, with George J. Burke, of the Michigan Bar (Detroit), formerly general counsel for the OPA, and Edward F. Carter, Justice of the Supreme Court of Nebraska, member of our Association since 1928, as his associates, had convicted and sentenced nine German commanders of high rank and acquitted two, the Iowa jurist issued a scathing blast in which he was reported to have said, among other things

> The victor in any war is not the best judge of the war crime guilt. Try as you will it is impossible to convey to the defense, their counsel, and their people that the Court is trying to represent all mankind rather than the country which appointed its members.
>
> What I have said of the nationalist character of the tribunals applies to the prosecution. The high ideals announced as the motives for creating these tribunals have not been evident.
>
> The prosecution has failed to maintain objectivity aloof from vindictiveness, aloof from personal ambitions for convictions. It has failed to strive solely to lay down precedents which might help the world to avoid future wars, to codify the rules for the conduct of governments and armies in the future.
>
> The lack of appeals leaves me with a feeling that justice has been denied.

The story further quoted Judge WENNERSTRUM as having told friends before he left Germany that "if I had known seven months ago what I know today, I would never have come here".

Brigadier-General Telford Taylor, chief American prosecutor, made a vigorous reply, in which he said that Judge WENNERSTRUM's blast was "subversive of the interests and policies of the United States", and added in part:

> Your statement that the trials are teaching Germans only that they lost the war to tough conquerors would be laughable if its consequences were not so likely to be deplorable.
>
> Your own tribunal, thanks to the wisdom, patience and judicial detachment of your colleagues, accorded the defendants a trial which can be an outstanding, sadly needed lesson to the Germans. One great obstacle to your trial's having this beneficent effect is the wanton, reckless nonsense which you yourself are quoted as uttering.

Army and prosecution tactics, condemned by the Iowa jurist as contrary to American concepts of fair play, were reported to have been criticized later by the tribunal of which Judge Hu C. Anderson, of Tennessee, (34 A.B.A.J. 136; February, 1948) and Robert F. Maguire, of Oregon and our House of Delegates (34 A.B.A.J. 42; January, 1948) are members.

James C. SHANNON

■ The death on March 7 of Dr. James L. McConaughy, the rugged scholar-in-politics who was Governor of Connecticut, elevated as his successor an experienced 51-year old lawyer who was serving as the Republican Lieutenant-Governor, James C. Shannon, of Bridgeport. The deceased Governor had been trained for public administration by his service as President of Knox College in Illinois and Wesleyan University in Connecticut. His successor is qualified by experience in the trial of cases, principally as counsel for labor organizations in the AFL.

Governor SHANNON was born in Connecticut and graduated from Georgetown University in 1918, after which he served as a cadet flier in World War I. His family has been in Bridgeport for 109 years; his grandfather, Daniel Shannon, played baseball on John T. McGraw's New York Giants. On being graduated from the Yale Law School in 1921, the future Governor established his law practice in Bridgeport. He served as a prosecutor and as a local judge. He was active in labor litigation as well as in Republican politics. For several years he had been chief counsel for the AFL in Connecticut.

For two years Governor SHANNON will fulfill the duties of an office made notable by the men who have held it, such as Simeon E. Baldwin, one of the founders of our Association, its President in 1890-91, long the Chief Justice of the State as well as its Governor, strongly favored for the presidency of the United States on at least two occasions; Dean Wilbur L. Cross, exemplar of the classic scholar in politics; Raymond E. Baldwin, Senator of the United States, member of our Association since 1928; and now Dr. McConaughy. It

was the last-named who said, as Lieutenant-Governor in 1939 while on leave of absence from Wesleyan, that "with all the temptations that beset it, politics is still, I think, the noblest career that a man can choose". This brilliant educator did contemn or hold aloof from the "professional" politicians, whom he described as the "decent, hardworking, cheerful, valiant, knockabout politicians, whose mysterious business it is to manage our affairs by breaking one another's heads". American lawyers in this crisis could well take a leaf from the Connecticut book.

J. Ollie EDMUNDS

Dishinger-Woodward Studio

▪ A practicing lawyer in Jacksonville, Florida, the past thirty years, a member of our Association since 1945, has become the President of John B. Stetson University at DeLand, Florida, and is said to be the first alumnus of a Florida institution of higher learning to return as its chief executive.

EDMUNDS entered the university at the age of seventeen after having done his high school work in a YMCA night school. Within seven years he received his A.B., A.M., and LL.B. degrees, having worked his way through. During his junior year in law school he was admitted to the Florida Bar, and began the practice of law with the DeLand firm headed by Carey D. Landis, later Attorney General of Florida, and Bert Fish, later United States Minister to Egypt. Before receiving his degree, EDMUNDS had appeared several times before the State Supreme Court.

Governor Doyle Carlton appointed EDMUNDS County Judge of Duval County at the age of twenty-seven; he was the youngest person ever to serve in that office. Three times he was re-elected, twice without opposition. In 1944 he resigned from the bench, and was defeated for the United States Senate by Senator Claude Pepper.

Stetson's law school is said to be the oldest in the State; its graduates are admitted to the State Bar without examination. President EDMUNDS has already entered the fight against legislation which would deny tax-free status to institutions which do not conform to views or requirements embodied in such legislation. "Coercive legislation" to impose the will of propaganda groups on private and church-affiliated universities is described by him as a part of "a conflict between two world philosophies—one Christian, the other pagan".

Henry S. DRINKER

▪ The Chairman of one of our Association's historic Committees came conspicuously into the news on March 10 when President Tappan Gregory announced that any inquiry by the Association into the conduct of the various lawyers who are reported to have had a hand in bringing about the dismissal of a federal indictment against four Al Capone gangsters, the settlement for $128,000 of their $670,000 income tax deficiency, and their release by the federal Parole Board from ten-year sentences after serving three-and-one-half years, would have to be conducted by the Committee on Professional Ethics and Grievances, of which HENRY S. DRINKER, of Philadelphia, has been Chairman since 1944.

The demand for such an investigation by our Association came from Congressman Fred E. Busbey, Chicago Republican legislator since 1943, a leader in the House Committee which has been investigating the success of the lawyers in their reputed dealings with the federal government in behalf of the convicted gangsters.

The powers and duties of Mr. DRINKER's Committee relate ordinarily to investigations of the professional conduct of members of our Association while State and local Bar Associations act as to disbarment proceedings in their jurisdictions. Neither of the lawyers named by Congressman Busbey are members of our Association. It has been a tradition of the Committee on Professional Ethics and Grievances that it is a quasi-judicial body and that in the absence of a complaint or charge it acts only upon its own initiative.

Mr. DRINKER is a native of Philadelphia, born there in 1880, educated at Haverford College and at Harvard Law School and the University of Pennsylvania Law School. Admitted to the Bar of his State in 1904, he has been engaged in the general practice of law since that time, and since 1932 has been the senior member of Drinker, Biddle and Reath. In politics he is a Republican. He has been a member of our Association since 1913 and has served considerably in the House of Delegates.

His distinguished avocation is music; he holds the degree of Mus. Dr. from the University of Pennsylvania. He has written extensively on legal and musical subjects, and is the author of *The Chamber Music of Johannes Brahms* (1933) and of *Bach Chorale and Cantata Texts in English* (1942).

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THE DEVELOPMENT OF INTERNATIONAL LAW

Louis B. Sohn • Editor-in-Charge

The Second Year of United Nations Legislation

■ In April of 1947 (33 A.B.A.J. 381) we published in this department an illuminating summary and review of "The First Year of United Nations Legislation". We looked on this as starting a series which would be an informative and valuable feature of the *Journal* from year to year. Accordingly, we are privileged to present below Dr. Sohn's report and review of "The Second Year of United Nations". Under his editorship, it has been the aim of the department to give information objectively, noncontroversially and expertly. The second annual review reveals the subject-matter to be of greatly enhanced importance, in our country and the world. W.L.R.

■ Some fifty multipartite agreements were concluded in 1947. In addition, some twenty agreements were concluded by international organizations, either with other international organizations or with a state or a group of states.

Most international instruments do not enter into force upon their signature by the countries concerned or their adoption by the competent international organ. Ordinarily, they require ratification in accordance with constitutional processes of states which are parties to them, and in most countries of the world such a ratification cannot be deposited by the head of state without the prior consent of a legislative body. While this procedure is seldom dispensed with in case of basic treaties, a different attitude prevails with respect to amendments to these basic instruments. The conventions of the Universal Postal Union have provided since 1878 that certain of their provisions may be amended in the interval between the Congresses of the Union by a two-thirds vote of the parties to the convention to be amended, and amendments thus approved are binding on all the parties to that convention. The Constitution of the Food and Agriculture Organization of the United Nations, of October 16, 1945, provides that amendments which do not involve new obligations for Member nations "shall take effect on adoption by the Conference by a vote concurred in by a two-thirds majority of all the members of the Conference". In pursuance of this provision, the FAO Conference approved on September 11, 1947, an important amendment revising the structure of the Organization and establishing the World Food Council. This instrument of amendment constitutes the nearest approach to true international legislation among the documents of 1947.

The importance of such a provision is illustrated by the difficulties encountered by the International Civil Aviation Organization with respect to obtaining the ratifications necessary for the coming into force of the amendment of May 27, 1947, which would enable it to expel Spain. This led the Aviation Organization to the preparation of a revision of the old-fashioned amendment clause in its basic convention, and it is hoped that the next Assembly will approve a clause similar to that contained in the Constitution of the Food and Agriculture Organization.

Another sample of international legislation in the strict sense of that word is presented by the Trusteeship Agreement for the Territory of Nauru, presented to the United Nations by the Governments of Australia, New Zealand, and the United Kingdom, and approved by the General Assembly on November 1, 1947. While the trusteeship agreements discussed in this column in April of 1947 (33 A.B.A.J. 381) provided for administration by a single state, this one envisages joint administration by three states, although in fact Australia will administer the territory in the name of all.

The Trusteeship Agreement designating the United States as the administering authority for the Territory of the Pacific Islands was submitted to the Security Council, and not to the General Assembly, because of the strategic character of that area. This Agreement did not come into force upon the approval by the Security Council on April 2, 1947, but had to be approved also "by the Government of the United States after due constitutional process". This formality was fulfilled on July 18, 1947, by means of Presidential approval authorized by a Joint Resolution passed by the Congress on July 14.

Pending Conventions on Privileges and Immunities of United Nations

Only one convention and two protocols were approved last year by the General Assembly of the United Nations. On November 21, 1947, it adopted a Convention on the Privileges and Immunities of Specialized Agencies, and proposed it "for acceptance by the Specialized Agencies and for accession by all Members of the United Nations and by any State Member of a Specialized Agency". This convention supplements the Convention on Privileges and Immunities of the United Nations, which was adopted on February 13, 1946, and has been ratified by fourteen states. The United States Senate approved that convention on July 17, 1947, and it now awaits action

by the House of Representatives.

Both conventions are deemed to constitute a much-needed codification of the law of international immunities; they assure proper status to international organizations. They have introduced also a new idea with respect to the pacific settlement of international disputes. They provide not only that in a case of a difference between a Member and the United Nations or a specialized agency, a request shall be made for an advisory opinion of the World Court, but also that "the opinion given by the Court shall be accepted as decisive by the parties". An international organization can thus obtain an opinion which will be as binding as a judgment rendered in contentious proceedings. A further step has been taken towards the recognition of the international legal personality of international organizations and towards granting them equal protection by international Courts.

Agreements as to Immunities in Countries Where Meetings Are Held

Special agreements on immunities are being concluded by the United Nations with governments of the countries in which the headquarters and main offices of the Organization are situated. Such an agreement was concluded, for instance, with the United States on June 26, 1947. This entered into force on November 21, 1947, after its approval by the United States Congress and by the General Assembly. An Agreement with the Swiss Government with respect to the "Ariana Site", on which is situated the Geneva office of the United Nations, as well as an interim arrangement on the privileges and immunities of the United Nations in Switzerland, were concluded on July 1, 1946, and were approved by the General Assembly on December 14, 1946. An Agreement with respect to the privileges and immunities of the International Court of Justice was concluded with the Netherlands Government on June 26, 1946, and was approved by the General Assembly on December 11, 1946, with additional recommendations on the subject.

A protocol transferring to the United Nations certain functions exercised by the League of Nations under the international conventions of 1921 and 1933 on traffic in women and children, and a protocol transferring functions under the Convention of 1923 on traffic in obscene publications, were approved by the General Assembly on October 20, 1947, and were signed by a number of states on November 12.

When a conference is being held outside of the headquarters of the United Nations, it often becomes necessary to conclude a special agreement with respect to the servicing of such a conference. Such an agreement was concluded, for instance, by the United Nations with Cuba on October 30, 1947, with respect to the Conference on Trade and Employment. Sometimes, such agreements are made between various international organizations. A typical case is that of the agreements concluded by the United Nations and the League of Nations with the United Nations Relief and Rehabilitation Administration on July 19 and August 26, 1946, and on July 10, 1947.

International Legislation by Inter-Organizational Agreements

An international organization which goes out of existence is usually faced with the necessity of transferring some of its assets and activities to other organizations. Some assets of the League of Nations were transferred to the United Nations by the agreements and protocols of July 19 and 31, 1946; four special funds were transferred by protocols of June 27, April 11 and April 14, 1947. An agreement on the transfer of displaced persons operations from the United Nations Relief and Rehabilitation Administration to the Preparatory Commission of the International Refugee Organization was signed on June 29, 1947.

Among other inter-organizational agreements concluded in 1947, one may mention the protocols of February 3, which put into force previous agreements between the United Nations, on one hand, and the Food and Agriculture Organization and the United Nations Educational, Scientific and Cultural Organization, on the other hand. An agreement on cooperation between the Food and Agriculture Organization and the International Labor Organization was finally approved in September, 1947. On November 15, 1947, the General Assembly gave its approval to agreements between the United Nations and the Universal Postal Union, the International Telecommunication Union, the International Monetary Fund and the International Bank for Reconstruction and Development. Only the first of these four agreements follows closely the standard form used in the agreements concluded with other specialized agencies in 1946. The United Nations' control over the Postal Union is much weaker; the Bank and Fund succeeded in obtaining almost complete freedom from United Nations interference.

Four loan agreements were concluded by the International Bank in 1947: with France, the Netherlands, Denmark and Luxemburg. Agreements on immigration were signed by Venezuela and the Inter-Governmental Committee on Refugees on February 21, 1947, and by Australia and the International Refugee Organization on July 22, 1947. Negotiations with several other countries were in progress at the end of the year.

1947 Emphasis on the Establishment of Regional Machinery

While the year 1946 witnessed the creation of the functional commissions of the United Nations to deal with economic, fiscal, and social problems, human rights, statistics, and transport and communications (see 33 A.B.A.J. 381; April, 1947), in 1947 attention was focused on the establishment of regional machinery. An Economic Commission for Europe and an Economic Commission for Asia and the Far East were created by the Economic and Social Council in March of 1947, and have already held their organizational

meetings. An Economic Commission for Latin America will be established early in 1948, and the need for an Economic Commission for the Near East is being investigated. An important step towards the implementation of the Charter of the United Nations by means of regional agreements was taken when the Inter-American Treaty of Reciprocal Assistance under Article 51 of the Charter was signed at Rio de Janeiro on September 2, 1947. (For text see 33 A.B.A.J. 1058; October, 1947; for approval by the House of Delegates, see 33 A.B.A.J 1090; November, 1947). Further steps in that direction are going to be taken at Bogota in the spring of 1948. A South Pacific Commission was established at Canberra on February 6, 1947, to promote the economic and social advancement of the dependent peoples of that area. This agreement and a similar agreement creating a Caribbean Commission, of October 30, 1946, have found a favorable reception in the United States Congress, and their early approval seems likely.

Developments in the Constitutional Law of the United Nations

The developments in the field of the constitutional law of the United Nations in 1947 included the new basic conventions of the Universal Postal Union and of the International Telecommunication Union. The Postal Convention of July 5, 1947, created an "Executive and Liaison Committee" to ensure the continuity of the work of the Union in the interval between Congresses. In addition to the main convention, seven special postal agreements were approved by this Congress of the Union; they are binding only on states which ratify them separately. The Telecommunication Convention of October 2, 1947, established an Administrative Council to "ensure the efficient coordination of the work of the Union" and to facilitate the implementation of the convention by the Members of the Union. An International Frequency Registration Board was organized "to effect an orderly recording of frequency assignments made by the different countries . . . with a view of ensuring formal international recognition thereof". The Telecommunication Convention contains also a novel provision for "Associate Members" of the Union, without the right to vote in the conferences of the Union or to be elected to any organs of the Union. Any territory or group of territories, not fully responsible for the conduct of its international relations, may become an Associate Member, provided its application is sponsored by the mother-country and is approved by a majority of the Members of the Union. Two sets of radio regulations were also approved on October 2, 1947; the United States has not signed one of them—the additional radio regulations.

On October 11, 1947, a convention of the World Meteorological Organization was signed at Washington "with a view to coordinating, standardizing, and improving world meteorological activities and to encouraging an efficient exchange of meteorological information". Not only states but also certain dependent territories are to be members of this Organization. It will function through a Congress, an Executive Committee, Regional Associations, Technical Commissions, and a Secretariat. The Convention will come into force when ratified by thirty states.

International Trade Organization and International Labor Organization

The preparatory work for an International Trade Organization resulted in the calling together of the Conference on Trade and Employment at Havana, on November 21, 1947. A general agreement on tariffs and trade, and a protocol providing for the provisional application of that agreement, were signed at Geneva on October 30, 1947.

The Fifth International Hydrographic Conference amended the statutes of the International Hydrographic Bureau in May of 1947, and preparations were made by the United Nations for the establishment of an Intergovernmental Maritime Consultative Organization.

The most efficient international organization, the International Labor Organization, has added on July 11, 1947, six new conventions to the eighty conventions previously adopted. One of the new conventions deals with the important problem of labor inspection in industry and commerce. The other conventions relate to labor standards and social policy in non-metropolitan territories and to the treatment of indigenous workers. Together with some previous conventions on the subject, they constitute a veritable labor code for colonies, and its general adoption would better the working conditions of native laborers in many dark corners of the world. Forty new ratifications of the previous conventions brought the total of ratifications at the end of 1947 to 961, but the United States is a party to only five of these conventions.

International Legislation Through the Treaties of Peace

Though the Treaties of Peace with Italy, Bulgaria, Hungary, Rumania, and Finland of February 10, 1947, were concluded outside the United Nations, they have conferred on the United Nations certain additional powers and have created useful precedents for the future. All these treaties provide, for instance, that in certain disputes between one of the United Nations and a former enemy country, in case of disagreement as to the selection of a third arbitrator, the appointment shall be made by the Secretary-General of the United Nations. In the past such appointments were ordinarily referred to the President of the World Court.

Annex VI of the Italian Peace Treaty provides that the Security Council shall assure the integrity and independence of the Free Territory of Trieste, the maintenance of public order therein and the protection of the basic human rights of the inhabitants. The Security Council was vested with the responsibility of appointing the Governor of the Free Territory and was given the right to pass, in the last instance, upon the

validity of legislation alleged to be in contradiction to the Statute of the Territory. During the discussion of this question in the Security Council, Australia contended that the Security Council cannot fulfill any duties nor exercise any powers not expressly mentioned in the Charter. When this contention was rejected by the Security Council, an important precedent was established for the enlargement of the powers of United Nations organs by common agreement of the parties concerned.

A similar enlargement of the powers of the General Assembly results from Annex XI of the Italian Treaty which establishes the procedure for the final disposal of the Italian colonies in Africa. If the powers concerned reach no agreement on the subject within one year from the coming into force of the Treaty, "the matter shall be referred to the General Assembly of the United Nations for a recommendation, and the Four Powers agree to accept the recommendation and to take appropriate measures for giving effect to it". States can, therefore, agree in advance to be bound by Assembly recommendations; and with respect to states parties to such an agreement, such recommendations will be as effective as if they were laws enacted by an international legislature with powers similar to a national legislative body.

Requirement of Ratification Still "the Main Stumbling-Block"

The limitations of space permit only a partial survey of the seventy-odd agreements adopted in 1947, but it suffices to show that the vitality and ebullience of international institutions has in that year far surpassed past achievements in the field. Even without a full-fledged international legislature, means have been found to meet the demands for international regulation of matters of common concern. While the requirement of ratification constitutes still the main stumbling-block to international progress in this field, useful work is being done. After some delay, most agreements come into force and bind large groups of states. In many cases the difficulties are caused not by the slowness of international processes but by the sluggishness of national legislative bodies, which take a long time to express their consent to the ratification of international instruments. In the United States, at least eight important international instruments were not given final approval by the Congress in 1947, despite strong endorsement by the President and, in a number of cases, after favorable report by the competent committees.

"Weighted Voting" Might Enable Dispensing with Ratifications

It is this inadequacy of national machinery which gives an added emphasis to proposals for dispensing with ratifications. But the progress in that direction, though noticeable, is obstructed by the unwillingness of small states to agree to a system of weighted voting which would give to larger states a number of votes commensurate with their size and importance. Bold proposals submitted by Great Britain and the United States to the Havana Conference on Trade and Employment provided for a vote weighted in accordance with population, national income and foreign trade. The smaller states rejected them almost unanimously, and thus prevented any enlargement of the legislative power of the Organization.

If the small states will agree some day to an international assembly with a weighted vote, they may be able to force the big countries to agree to a grant of a carefully delimited legislative and regulatory power to that assembly. It seems to me somewhat amazing that some progress has been made in that direction, despite the stubborn refusal of both the small and the big powers to accept the basic premises of organized world society.

Tulane Centenary Address on "International Legislation and the American System"

■ One of the three addresses commemorative of the centenary of the Law School of Tulane University was delivered in Dixon Hall, at the University, in New Orleans, on Monday evening, March 22, by former President William L. Ransom, of the New York Bar, who took as his subject "International Legislation and the American System". The address will be published in the following issue of the *Tulane Law Review*.

The second address of the centenary series will be delivered in April by Dean Wesley A. Sturges, of the Yale Law School; the third and final address, by Judge John J. Parker, of North Carolina and the United States Circuit Court of Appeals for the Fourth Circuit.

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Review of Recent Supreme Court Decisions

ADMINISTRATIVE LAW

Where CAB Certificate Subject to Approval of President, Judicial Review Precluded

■ *Chicago and Southern Air Lines* v. *Waterman Steamship Corporation; Civil Aeronautics Board* v. *Same,* 92 L. ed. Adv. Ops. 367; 68 Sup. Ct. Rep. 431; 16 U.S. Law Week 4153. (Nos. 78 and 88, decided February 9, 1948).

The Civil Aeronautics Act subjects to judicial review orders of the Civil Aeronautics Board except those "in respect of any foreign air carrier, subject to approval of the President" under the Act. The order here in question involved a citizen air carrier, but concerned overseas and foreign air Commerce. All such orders are subject to presidential approval whether involving foreign or citizen carriers. The Circuit Court of Appeals for the Fifth Circuit held that whatever part of the order resulted from Presidential action was not subject to judicial review, but that the CAB's recommendations, before submission to the President, could be reviewed.

The Court, in an opinion by Mr. Justice JACKSON, held that a certificate for overseas or foreign air transportation is not mature and therefore not susceptible to judicial review at any time before being finalized by Presidential approval, and that after such approval, the final order embodies Presidential discretion as to political matters beyond the competence of courts to adjudicate. The opinion stresses the differences between air transportation and other forms of transportation, the relation of aviation to national security and defense, and the broad character of Presidential control over the final order—based on the fact that he "has available intelligence services whose reports neither are nor ought to be published to the world".

The minority felt that review could be had in cases of this character without intruding upon the exclusive domain of the executive. Mr. Justice DOUGLAS, with Mr. Justice REED, Mr. Justice BLACK and Mr. Justice RUTLEDGE concurring, agreed that there could be no judicial review of the President's action, but that under the statute after presidential action there could be judicial review of the Board's part of the order to determine whether it was valid and whether the Board had acted lawfully. "Judicial review would assure the President, the litigants and the public that the Board had acted within the limits of its authority". A.

The case was argued by R. Emmett Kerrigan for Chicago and Southern, by Robert L. Stern for the CAB, and by Bon Geaslin for the steamship company.

BANKRUPTCY

Turnover Orders — Punishment for Contempt for Non-Compliance

■ *Maggio* v. *Zeitz,* 92 L. ed. Adv. Ops. 376; 68 Sup. Ct. Rep. 401; 16 U. S. Law Week 4139. (No. 38, decided February 9, 1948).

Maggio, president of a concern adjudged bankrupt April 23, 1942, was ordered by a referee to turn over merchandise taken from the concern in 1941, found to be in Maggio's possession or under his control in January, 1943. The turnover order was affirmed by the District Court on December 28, 1943.

Maggio was jailed for contempt of the turnover order by a further order entered June 5, 1945. There had been findings to support the turnover order that Maggio stole the goods in November and December of 1941 and that he still possessed them when the turnover order was made by the referee in August of 1943; but there was no evidence to support the second finding. However, the Circuit Court of Appeals affirmed and certiorari was denied.

The contempt order rested on a presumption that the possession of goods found to exist at the time of the turnover order continued, in the absence of proof to the contrary, of which there was none. The Circuit Court of Appeals affirmed, with an opinion clearly indicating that it did so only under compulsion of its own prior decisions, which were sharply challenged in the opinion in the instant case. Also, it felt constrained under *Oriel* v. *Russell,* 278 U. S. 358, to regard the finding of prior possession of the goods as res judicata.

On certiorari, the Supreme Court reversed. Mr. Justice JACKSON delivered the opinion. The Court construes the presumption of possession as no more than a *prima facie* case when the question of commitment for contempt arises. While the bankrupt "cannot challenge the previous adjudication of possession", "that does not prevent him from establishing lack of present possession". But if he offers "no evidence as to his ability to comply with the turnover order, or stands mute, he does not meet the issue".

The Court vacated and remanded the order, with directions to proceed further, consistently with the opinion.

Mr. Justice BLACK delivered a separate opinion, in which Mr. Justice RUTLEDGE joined. The view was taken that Maggio should be released without further proceedings.

Mr. Justice FRANKFURTER dissented. H.

The case was argued by Max Schwartz for Maggio and Joseph Glass for Zeitz.

EDITOR'S NOTE: In *Sipuel* v. *Board of Regents,* reviewed in this department in February (page 146), the case was argued on behalf of the Board by Maurice H. Merrill, as well as by Fred Hansen.

Reviews in this issue by James L. Homire, Harold F. Watson and Richard B. Allen.

COMMERCE

Interstate Commerce Act—Discriminatory Practice Imposed on Railroad by Lessor of Track Prohibited

■ *United States* v. *Baltimore & Ohio Railroad Company*, 92 L. ed. Adv. Ops. 485; 68 Sup. Ct. Rep. 494; 16 U. S. Law Week 4217. (No. 223, decided March 8, 1948).

This case involves the question whether a non-carrier owner of a segment of track leased to a carrier can effectively reserve the right to prohibit the transport of a commodity by a railroad over the leased segment, or whether such a reservation would be invalid under the Interstate Commerce Act. The Interstate Commerce Commission found that the prohibition operated as a discrimination and entered a cease and desist order. However, a specially constituted District Court set the order aside. On appeal the District Court's order was reversed by the Supreme Court.

Mr. Justice BLACK delivered the opinion. He states that there is no doubt that the prohibition would be unlawfully discriminatory if the railroad owned the track. The conclusion is reached that the fact that someone else owns the track cannot justify the discrimination.

Mr. Justice BURTON dissented.

H.

The case was argued by Frederick Bernays Wiener for the United States and Ashley Sellers and Robert R. Pierce for appellees.

Interstate Commerce Act—Power of ICC To Relieve Carrier from Compliance with State Incorporation Law

■ *Seaboard Air Line Railroad Company* v. *Daniel*, 92 L. ed. Adv. Ops. 409; 68 Sup. Ct. Rep. 426; 16 U. S. Law Week 4169. (No. 390, decided February 16, 1948).

South Carolina requires that railroad lines within the state shall be owned and operated only by state created corporations. Foreign corporations are under heavy penalties if they attempt to operate railroad lines in that state. Seaboard, a Virginia corporation, with the approval of the Interstate Commerce Commission, succeeded to the ownership and operation of a railroad system, part of which is in South Carolina. Seaboard brought an action in a South Carolina court to enjoin imposition of penalties for violation of the laws above referred to.

It appeared that the ICC, pursuant to Section 5 of the Interstate Commerce Act, had approved the purchase of the railway system, had found that compliance with the South Carolina railroad corporation laws would result in substantial delay and needless expense and would not be consistent with the public interest. The state in answer to the complaint did not deny the power of Congress to relieve the railroad from compliance with the South Carolina requirements but took the position that the Commission's order, purporting to relieve from compliance, was void because beyond the Commission's authority. The state court decided for the state on the pleadings.

On appeal the Supreme Court reversed. Mr. Justice BLACK who delivered the opinion, decides that the remedy sought by the railroad was a proper one, that the Commission's order is sufficiently clear as to its purpose to exempt the railroad from the state's corporate law requirements and finally that the order of the Commission was within its statutory powers.

H.

The case was argued by W. R. C. Cocke for Seaboard and Irvine F. Belser for Daniel.

CONSTITUTIONAL LAW

Mandate of *Sipuel* v. *Board of Regents* Correctly Interpreted

■ *Fisher* v. *Hurst*, 92 L. ed. Adv. Ops. 420; 68 Sup. Ct. Rep. 389; 16 U. S. Law Week 4167. (No. 325, Misc., decided February 16, 1948).

This was a motion for leave to file a petition for a writ of mandamus seeking to compel compliance with the decision of the Supreme Court of the United States on January 12 in *Sipuel* v. *Board of Regents* (34 A.B.A.J. 146; February, 1948). Named as defendants were the members of the Supreme Court of Oklahoma, the district judge of the Cleveland County District Court, and the Board of Regents of the University of Oklahoma.

On January 17 the Oklahoma Supreme Court by opinion directed the Board of Regents to give plaintiff an opportunity to commence the study of law at a state institution as soon as citizens of other groups are afforded such opportunity, but also directed compliance with the Oklahoma Constitution and statutes which require segregation of races in schools of the state.

The District Court of Cleveland County interpreted this opinion as a direction to the Board to establish a separate state law school for Negroes, and on January 22 ordered the Board either to (1) accept law school applicants of any group at the state university if the separate law school was not established and ready to function at the designated time, and retain them until such school was set up, or (2) enroll no applicant of any group in the first-year law class at the state university until the separate school was set up. If the separate school was established and ready to function, plaintiff was not to be enrolled at the state university. The court retained jurisdiction of the case specifically.

In a *per curiam* opinion the Supreme Court denied the motion, holding that the "District Court of Cleveland County did not depart from our mandate", and that no question was now presented as to whether the district court's order had been followed or disobeyed. The Court remarked that neither *Sipuel* v. *Board of Regents* nor this petition presented the question whether a state might not satisfy the equal protection clause by establishing a separate school for Negroes.

Mr. Justice MURPHY was of the opinion that a hearing should be had on the question of evasion.

Mr. Justice RUTLEDGE dissented on the ground that one of the alternatives of the District Court's order would allow the state to exclude all first-year law students, thus continuing to afford advantages to white

students while denying them to petitioner. This would not be in accord with the Court's mandate of January 12, which, he said, "required . . . equality in fact, not in legal fiction" A.

Fourth Amendment—Illegal Search and Seizure

■ *Johnson* v. *United States,* 92 L. ed. Adv. Ops. 360; 68 Sup. Ct. Rep. 367; 16 U. S. Law Week 4133. (No. 329, decided February 2, 1948).

On reliable information that the smell of burning opium was coming from a hotel room, federal agents, without a warrant, entered and searched the room. They then found opium and smoking apparatus in the room and arrested the petitioner, who was later charged with violation of the federal narcotic laws. The evidence thus found was admitted at a trial of the petitioner, over protest, and she was convicted. The Circuit Court of Appeals affirmed.

On certiorari, the Supreme Court reversed. Mr. Justice JACKSON delivered the opinion. He points out that the search, without a warrant, was illegal under the Fourth Amendment, and rejects the Government's contention that it was justified without a warrant because incident to an arrest. His conclusion is that it will not do "to justify the arrest by the search and at the same time to justify the search by the arrest".

The CHIEF JUSTICE, Mr. Justice BLACK, Mr. Justice REED and Mr. Justice BURTON dissented without written opinion. H.

The case was argued by James Skelly Wright for Johnson and by Robert S. Erdahl for the United States.

Illinois "Released Time" School Program for Religious Instruction Violates First Amendment

■ *Illinois ex rel. McCollum* v. *Board of Education,* 92 L. ed. Adv. Ops. 451; 68 Sup. Ct. Rep. 461; 16 U. S. Law Week 4224. (No. 90, decided March 8, 1948).

In 1940 the Board of Education of School District No. 71, Champaign County, Illinois, gave permission to the Champaign Council on Religious Education, a voluntary organization of Jewish, Roman Catholic and a few of the Protestant faiths, to offer classes in religious instruction during "released" school time in grades four to nine, inclusive. Teachers for these classes were employed by the Council, at no expense to the Board, and classes were conducted on school premises for children whose parents signed a card indicating a desire that their child participate in the program. The classes were held during a period of school time set aside for the purpose. For those participating in the instruction, attendance at the classes was compulsory, and attendance records were kept and returned to the secular teachers. Those not participating were not excused from school duties, but were required to continue their studies in some other part of the school building.

Relator McCullom, asserting an interest as a resident and taxpayer and parent of a child enrolled in the Champaign school system, brought a petition for mandamus, the prayer of which requested the court to direct the Board to adopt regulations prohibiting "all instruction" in religion and "all religious education" in the district and in all school houses of the district when occupied by public schools.

The circuit court dismissed the petition and the Illinois Supreme Court affirmed.

On appeal the Supreme Court reversed and remanded the case to the Illinois Supreme Court. Four opinions were delivered, with eight justices voting for reversal and one favoring affirmance of the Illinois judgment.

Mr. Justice BLACK delivered the opinion of the Court. After stating the facts and denying the Board's motion to dismiss the appeal, he states that the Champaign program "is beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith" and "falls squarely under the ban of the First Amendment (made applicable to the states by the Fourteenth) as we interpreted it in *Everson* v. *Board of Education,* 330 U. S. *1.*"[1] He quotes from the *Everson* case the statement that the clause against establishment of religion was intended to erect a "wall of separation between church and state", and finds that here not only are tax-supported school buildings used for dissemination of religious doctrines, but that also the state's compulsory public school machinery is made available.

Mr. Justice FRANKFURTER delivered an opinion joined in by Mr. Justice JACKSON, Mr. Justice RUTLEDGE and Mr. Justice BURTON. These justices had dissented in the *Everson* case. This opinion contains a long and detailed recital of the history of "released time" programs of religious instruction in public schools and finds that, whatever may be the effect of other such programs, the "commingling of religious with secular instruction" as here authorized by Illinois is forbidden by the Constitution. Mr. Justice RUTLEDGE and Mr. Justice BURTON also concurred in Mr. Justice BLACK's opinion.

In a separate concurring opinion Mr. Justice JACKSON expressed some doubt as to the Court's jurisdiction and stated that the complaint demanded more than plaintiff was entitled to, but that the Court did not tell the state court where it might stop, or set up any standards for such a determination.

Mr. Justice REED dissenting, found it "difficult to extract from the opinions any conclusion as to what it is in the Champaign plan that is unconstitutional". He says that here there is no "establishment of religion" or prohibition of the free exercise of religion, and that a rule of law should not be drawn from the figure of speech "wall of separation between church and state".

A.

The case was argued by Walter F. Dodd and Edward R. Burke for Mrs. McCollum and by John L. Franklin and Owen Rall for the Board.

1. For a review of the *Everson* case, see 33 A.B.A.J. 492; May, 1947.

Housing and Rent Control Act of 1947 Sustained as Constitutional Exercise of War Power

■ *Woods* v. *The Cloyd W. Miller Company,* 92 L. ed. Adv. Ops. 403; 68 Sup. Ct. Rep. 421; 16 U. S. Law Week 4165. (No. 486, decided February 16, 1948).

The Miller Company demanded of its tenants rent increases in excess of those allowable under the Housing and Rent Act of 1947. The Housing Expediter instituted proceedings to enjoin the violation. After a hearing the United States District Court for the Northern District of Ohio, Eastern Department, held Title II of the Act an unconstitutional exercise by Congress of its "war power", which the Court held expired December 31, 1946, with the issuance of a presidential proclamation terminating hostilities, and an unconstitutional delegation of legislative powers to the Housing Expediter (34 A.B.A.J. 152; February, 1948).

On direct appeal, the Court unanimously reversed with Mr. Justice DOUGLAS writing the opinion. The war power "sustains this legislation", he declared; the "war power does not necessarily end with the cessation of hostilities . . . but includes the power 'to remedy the evils which have arisen from its rise and progress' ". Then, citing a House report, he relates the housing shortage to the war.

Recognizing that since the effects of war may be felt in a modern economy for years, and the war power thus used inordinately, the Court felt that there were "no such implications" in this decision, since the case dealt with a "housing deficit greatly intensified during the period of . . . war".

Mr. Justice FRANKFURTER concurred in the opinion, giving as his reason that it "merely applies" earlier "decisions to situations now before the Court".

Mr. Justice JACKSON concurred, on the ground that the state of war was more than technical, in an opinion in which he said that he thought it necessary "to utter more explicit misgivings" since the Government asserted no constitutional basis for the legislation other than "undefined and undefinable" war power. A.

The case was argued by Philip B. Perlman for Woods and by Paul S. Knight for the Miller Company.

CRIMES

Selective Training and Service Act

■ *Mogall* v. *United States,* 92 L. ed. Adv. Ops. 490; 68 Sup. Ct. Rep. 487; 16 U. S. Law Week 4253. (No. 48, decided March 8, 1948).

The Court, in a *per curiam* opinion, reversed petitioner's conviction for failure to report facts in writing to a local draft board which might have resulted in petitioner's employee being placed in a different classification, the Government conceding that Selective Service Regulations imposed no legal obligation upon petitioner as an employer to make such reports. The case was remanded to the District Court for consideration of the question of petitioner's trial under the indictment as an aider and abettor. A.

The case was argued by Rudolph F. Becker, Jr., for Mogall and W. Marvin Smith for the United States.

STATUTES

Veterans' Preference Act—Construction of "Ex-servicemen"

■ *Mitchell* v. *Cohen, Same* v. *Hubickey,* 92 L. ed. Adv. Ops. 433; 68 Sup. Ct. Rep. 518; 16 U. S. Law 4175. (Nos. 130 and 131, decided March 8, 1948).

In these two cases the Court held, in an opinion by Mr. Justice MURPHY, that the federal government employment preferences in civil service accorded war veterans under the Veterans' Preference Act of 1944 do not apply to persons who served as temporary members of the Volunteer Port Security Force of the Coast Guard Reserve, since such persons are not "ex-servicemen" within the meaning and legislative intent of the Act.

Mr. Justice DOUGLAS dissented.

A.

The case was argued by Herbert A. Bergson for Mitchell and Gerhard A. Gesell for Cohen and Hubickey.

PATENTS

Discovery of a Phenomenon of Nature Not Patentable

■ *Funk Brothers Seed Company* v. *Kalo Inoculant Company,* 92 L. ed. Adv. Ops. 414; 68 Sup. Ct. Rep. 440; 16 U. S. Law Week 4161. (No. 280, decided February 16, 1948).

The Kalo Inoculant Company brought suit charging infringement of certain product claims of patent No. 2,200,532, issued to Bond on May 14, 1940, and the defendant filed a counterclaim demanding a declaratory judgment that the entire patent was invalid. The District Court held the product claims invalid, and dismissed both complaint and counterclaim. Both parties appealed and the Seventh Circuit Court of Appeals reversed, holding the product claims were valid and infringed, and dismissing the counterclaim. The Supreme Court reviewed this decision on writ of certiorari. Mr. Justice DOUGLAS delivered the opinion of the Court.

The claims in suit are directed to an inoculant for leguminous plants, which inoculant comprises a plurality of mutually non-inhibitive strains of different species of bacteria of the genus Rhizobium. As the opinion points out, the ability of bacteria of the genus Rhizobium to aid in the nitrogen-fixing action of leguminous plants was well known, as was also the characteristic of the several species of this bacteria in inhibiting the nitrogen-fixing qualities of other species when admixed with them. The patentee discovered, however, that certain strains of each species are non-inhibitive in nature and that selected strains of the several species can be mixed without damage to their respective nitrogen-fixing qualities. Thus, a variety of leguminous crops can be successfully treated with the same inoculant mixture.

The Court held the product claims invalid on the ground that they cover nothing more than a phenomenon of nature which was discovered by Bond, but not created by him.

Mr. Justice FRANKFURTER filed a separate concurring opinion and Mr. Justice BURTON, with whom Mr. Justice JACKSON concurred, dissented.

W.

The case was argued by H. A. Toulmin, Jr., for Funk Brothers and by J. Bernard Thiess for Kalo.

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Courts, Departments and Agencies

E. J. Dimock . . EDITOR-IN-CHARGE

Aliens. . deportation. . alien who entered the U. S. in 1931 and joined in 1937 criminal conspiracy which began in 1934 is not subject to deportation for committing crime involving moral turpitude within five years after entry. . in any event no crime was committed until 1936, date of first overt act.

■ Case No. A-5501228, BIA, February 10, 1948. (Digested in 16 U. S. Law Week 2397, February 24, 1947).

Respondent, a native and citizen of Italy, was ordered deported for having been sentenced for a year or more for a crime involving moral turpitude committed within five years after his entry in 1931, constituting a ground of deportation under the Act of February 5, 1917, § 19. He had been convicted in 1943 on a charge of conspiracy to defraud the United States of liquor taxes. The Central Office ruled that under the doctrine of continuing offense he was guilty of the conspiracy offense as a co-conspirator when it first began in 1934, rather than when he joined it in 1937, and thus had committed a crime within five years of his entry.

The Board, however, was of the opinion that §19 was intended to reach only those aliens who actually commit criminal acts within the five-year period. An alien sentenced for conspiracy is not to be deported under §19 unless he himself has conspired or has committed an act in furtherance of the conspiracy within five years after entry. Further, in view of the fact that the earliest overt act alleged in the original criminal indictment occurred in 1936, the government did not prove that any crime had been committed within five years after the alien entered.

Aliens. . exclusion. . alien labor union official is not subject to exclusion order because of membership in political party which undertook the distribution of copies of the Communist Manifesto since the Manifesto does not advocate overthrow by force or violence of government of U. S.

■ Case No. 56068/819, BIA, February 10, 1948. (Digested in 16 U. S. Law Week 2397, February 24, 1947).

A Canadian official of the International Woodworkers Union of America was denied temporary admission into the United States under the Act of October 16, 1918, §1 (e), as amended (8 USC § 137). The statute excludes "aliens who are members of or affiliated with any organization . . . that writes, circulates, distributes . . . any written or printed matter" . . . "advising, advocating or teaching: (1) the overthrow by force or violence of the government of the United States or of all forms of law". Appellant had been excluded because of his membership in the Labor Progressive Party of Canada, which subscribes to Marxist principles and had undertaken the national distribution of 25,000 copies of the *Communist Manifesto* during 1946.

The Board found that the *Communist Manifesto* was not within the description of the statute in that it did not advise, advocate or teach the overthrow by force or violence of the government of the United States, and that therefore appellant was not inadmissible to the United States. Rather, it was said, the *Manifesto* called for the overthow of social conditions which were existing at the time of its publication. The Board cites *Schneiderman* v. *U. S.*, 320 U. S. 118. It authorized appellant's present and future admission for two-week periods as a visitor. (See also identical case, A-6752026, February 10, 1948.)

Administrative Law. . judicial review . . Navy Paymaster General's ruling that naval officer's widow is not entitled to statutory widow's allowance is subject to judicial review under § 10 of Administrative Procedure Act.

■ *Snyder* v. *Buck*, U.S.D.C., D. C., January 20, 1948, Holtzoff, J.

A naval officer's widow sought relief in the nature of mandamus against the Paymaster General of the Navy to require him to pay her the statutory widow's allowance, as provided by 34 USC §943. The Navy Department declined to approve plaintiff's claim on the ground that her marriage to the deceased was invalid in that her prior divorce was ineffective since it was obtained in Mexico where neither she nor her first husband had ever resided or appeared. The allowance was paid instead to the deceased's sister.

The Court first determined that the Navy Department's ruling was subject to judicial review under §10 of the Administrative Procedure Act, as the Navy was within the scope of the Act. The Court stated that under §10 of the Administrative Procedure Act every final agency action was subject to judicial review at the behest of any person whose legal rights were adversely affected unless the action was taken under a statute precluding judicial review, or unless the agency action was by law committed to agency discretion. The Court said: "This result necessarily subjects to judicial review a large group of administrative actions which previously could not have been re-examined or set aside by the courts.

This category includes numerous determinations of private rights, in respect to which a writ of mandamus did not lie, because they involved functions that were not purely ministerial, but required a decision on questions of law or questions of fact by the administrative agency."

As to the Navy's ruling, the Court held that under the law of Maryland, where the marriage of plaintiff and the deceased was celebrated, a voidable marriage was not subject to collateral attack and that, since no action to annul the marriage had ever been brought by either party to it, plaintiff must be deemed to be the deceased's widow and entitled to a widow's allowance. The Court observes that as a matter of public policy "it is at best questionable whether an administrative agency, such as the Veterans' Administration, the Navy Department, or the War Department, has any authority to hold a marriage invalid in an *ex parte* manner on the basis of its own investigation".

The Court paraphrased §10 as providing "the form of review is any suitable or appropriate proceeding, unless an adequate remedy is otherwise provided by a special statute". As the writ of mandamus asked was inappropriate, since the act required was not purely ministerial, the Court granted a mandatory injunction directing the Paymaster to pay plaintiff the widow's allowance.

[Cf. *U. S.* v. *Carusi*, C.C.A. 3rd, February 16, 1948, Goodrich, C. J., (digested in 16 U. S. Law Week 2401, February 24, 1948), where the Court held that the 1917 Immigration Act does not "preclude judicial review" of deportation orders even though it provides in §19 that "the decision of the Attorney General shall be final". The fact that such orders were reviewable by habeas corpus was held to take them out of the non-reviewable class and permit the review under §10 of the Administrative Procedure Act by "petition for review".]

Atomic Energy Commission . . statement of organization and procedures published.

▪ *Code of Federal Regulations*, Tit. II, Ch. 1, Pt. I, §1.1-1.45 (13 Fed. Reg. 548).

The Atomic Energy Commission, in the *Federal Register* of February 6, 1948, published a statement dealing in Part 1 with its organization and in Part 2 with its procedures. The statement as to organization deals with its authority, purpose, programs, operations, outline of organization, committees, departments of Commission headquarters, and offices of directed operations. The statement as to procedures refers, among other things, to a regulation for licensing the transfer of source materials, published as *Code of Federal Regulations*, Title II, Part 40 (12 F. R. 1855), and to a regulation for licensing the manufacture and transfer of facilities for the production of fissionable material, published as *Code of Federal Regulations*, Title II, Part 50 (12 F. R. 7651).

Citizens. . claim of American citizen for return of vested property denied by Alien Property Director because claimant also German citizen under German law.

▪ *In the Matter of Emily Fritze*, Doc. No. 118, Office of Alien Property, February 6, 1948.

Claimant, a native-born American citizen, married a German in 1930. By virtue of the marriage, she acquired German citizenship; in the eyes of American law, she remained an American citizen. She lived with her husband in Germany until 1946 when she resumed residence in this country and filed a claim with the Office of Alien Property for return of a bank account vested under the Trading with the Enemy Act, 50 USC App. §1 *et seq*. The Director of the Office dismissed the claim on the ground that §32 (a) (2) (D) of the Act, which prohibits return of vested property to an individual present in enemy or enemy-occupied territory during the war "who was at any time after December 7, 1941, a citizen or subject of Germany, Japan, Bulgaria, Hungary, or Rumania" contains "no exception for enemy citizens who may also have American citizenship".

The Director admitted that his reading of §32 (a) (2) (D) gives rise to the possibility of a situation where an American citizen who was also a German citizen and had been caught involuntarily by the war in Germany could not recover her property while an American citizen who was not also a German citizen and who had voluntarily remained in Germany during the war could recover hers under §32 (a) (2) (C).

[Cf. §32 (a) (2) (D) with 50 USC §21 which authorizes the restraint and detention in wartime of "all natives, citizens, denizens, or subjects of the hostile nation or government . . . who shall be within the United States and not actually naturalized". This has not been interpreted by the Department of Justice as authorizing detention of American citizens who also possess enemy citizenship. See Senate Report No. 1496, 88th Cong., 2nd Sess., p. 2 (1942)].

Civil Service Commission . . bilateral hearing conducted in federal political activity case for first time.

▪ *In the Matter of Serravalle*, Fed. No. 1210, CSC, February 2, 1948.

Upon investigation by representatives of the War Department and Civil Service Commission, the latter issued a proposed order finding prima facie proof that respondent federal employee had engaged in prohibited political activity. Respondent had been charged with rendering partisan political service in transporting voters to the polls in a Pennsylvania township at the primary election on June 19, 1945, in violation of both Civil Service Rule IV (4.1) and the Hatch Act, §9 (a). The evidence on the government's side consisted of affidavits introduced at the hearing, while respondent's evidence comprised that of witnesses who testified in detail at the hearing. The Commission found, upon the complete record, that a violation was not established and ordered that the proposed order be vacated and the proceeding dismissed.

This case was considered procedurally noteworthy in being the first political activity case involving a federal employee in which a "bilateral" hearing had been conducted. Theretofore the procedure established in federal cases provided only for a "unilateral" hearing where the evidence against the respondent was not disclosed to him. In the bilateral hearing the evidence is disclosed but, since the Commission has no subpoena power in such cases, it is presented by affidavit wherever voluntary attendance of witnesses cannot be obtained. In cases involving state employees, however, the Hatch Act, §12 (a), provides for a full statutory hearing and subpoena power. The bilateral hearing is now being employed in federal cases by consent of respondents as an experimental measure. If found to be preponderantly advantageous, new rules of practice will be published in the *Federal Register,* and the procedure will thereby be made obligatory.

Constitutional Law . . self-incrimination. . .not error to admit evidence of type of accused's blood where sample obtained by subterfuge.

▪ *Davis* v. *State of Maryland,* Maryland Ct. of Appeals, February 18, 1948, Marbury, C. J.

Appealing from a judgment sentencing him to life imprisonment for first degree murder, appellant claimed that the admission in evidence over his objection of a sample of his blood was illegal since he had not been told when it was taken after his arrest that it might be used against him. Merely asked by a physician who was treating him and the captain of detectives visiting at the jail if he had any objection to their taking his blood specimen, to which he answered in the negative, appellant was not informed of the purpose for which it was taken. The admission of his blood specimen tended to prove that blood on his coat did not come from his own body and that it was the same type as that of the victim. Appellant claimed that testimony about his blood thus taken from his body by a subterfuge was inadmissible as a violation of his constitutional immunity from being required to give evidence against himself.

Treating the question as if the evidence was not obtained by the completely voluntary action of appellant, the Court ruled that the evidence obtained by taking a blood specimen from an accused was not a violation of the Maryland Declaration of Rights. The Court stated that there was no constitutional question involved in the case. It could find no substantial difference between obtaining a blood specimen from an accused and obtaining his fingerprints or physical property when its possession was a pertinent question at issue in a felony charge against him, in both of which cases the evidence had been held to be admissible.

Judgments . . full faith and credit . . judgment entitled to full faith and credit though based on erroneous premise that earlier judgment based on statute of limitations was res judicata.

▪ *Hartmann* v. *Time, Inc.,* C.C.A. 3rd, February 3, 1948, Biggs, C. J. (Amending the opinion reviewed in 34 A.B.A.J. 153; February, 1948). (Digested in 16 U. S. Law Week 2404, February 24, 1948).

This was one of six suits brought in different jurisdictions by plaintiff to recover damages for alleged libel in the January 17, 1944, issue of *Life* magazine. The instant suit was filed on January 17, 1945, in a Pennsylvania court (from which it was removed to the federal courts) on a cause of action embracing libel in the forty-eight states and foreign countries. Defendant's motion for summary judgment raised issues of the statute of limitations, res judicata and full faith and credit.

The announced opinion differs from the original in that it deals with the full faith and credit issue.

Prior to the lower-court decision in this case, suits on complaints similarly phrased had been dismissed in the District of Columbia and in New York as barred by the statute of limitations, and a judgment for defendant had been entered in Massachusetts based either on the bar of the statute of limitations or on the theory that the District of Columbia and New York dismissals made the question of the statute of limitations res judicata.

The Court held that, if the Massachusetts judgment was based upon res judicata, it was probably erroneous, under the rule that a judgment rendered on the ground of the statute of limitations usually is not a bar to a subsequent suit, but nevertheless, under the full faith and credit clause the Massachusetts judgment would require dismissal of the instant suit. The lower court was therefore instructed, on the remand of the case, to determine whether the Massachusetts court had proceeded upon res judicata.

Labor Law . . Labor Management Relations Act . . U. S. District Court proceeding by NLRB regional director under § 10 (j), for temporary restraining order against union pending unfair labor practice adjudication in NLRB, within Federal judicial power and not violative of due process . . Board's delegation to regional director authorized.

▪ *Evans* v. *International Typographical Union,* U.S.D.C., S.D. Ind., February 25, 1948, Swygert, D.J.

Petitioner, regional director for NLRB, petitioned for a temporary restraining order pursuant to §10 (j) of the Labor-Management Relations Act, pending adjudication by the NLRB of a complaint against respondent union for commission of an unfair labor practice. Respondent moved to dismiss on the grounds (1) that §10 (j) was unconstitutional, under Article III,§1 and 2 of the United States Constitution, as attempting to vest in constitutional courts power to act otherwise than in "cases" or "controversies", and, under the Fifth Amendment, as depriving respondent of due process, and (2) that the NLRB had attempted an unlawful delegation of powers in authorizing its regional

directors or the general counsel to institute 10 (j) petitions. The Court denied the motion.

In holding §10 (j) constitutional, the Court held that the application was a "case" or "controversy", reasoning that an action for interlocutory equitable relief presents a justiciable controversy, although final adjudication on the merits is to be made by an administrative tribunal, since the ruling of a court of equity is conclusive in character to the same extent as in the case of any similar relief *pendente lite*, and that in passing on a 10 (j) petition the Court acts in a judicial capacity. The Court further held that the granting of a 10 (j) petition, by working a final and irrevocable determination of rights without passing on the merits, does not deny due process (1) because the remedy in this respect does not differ from that afforded in every equitable proceeding of the kind and (2) because the Act by empowering the Court to grant such relief as it "deems just and proper" permits the molding of the decree "to avoid if possible determining in effect the actual merits of the issues".

The "unlawful delegation" argument rested on the fact that §10 (j) reads "the Board shall have power" to bring the authorized petition, while certain other sections of the Act refer to the Board or its designated agents. The Court, however, found the authority to delegate in §3 (d) of the Act, which confers on the General Counsel specified duties and "such other duties as the Board may prescribe". The regional directors are subordinates of the general counsel, and so held to be within the orbit of §3 (d). The challenged delegation was also deemed within the general policy of the Act to separate the Board's judicial functions from the investigative and prosecutive functions lodged in the general counsel and his staff.

Labor Law. . merit wage increases. . statutory obligation of employer to bargain collectively with representatives of its employees as to wages, hours and working conditions includes duty to bargain as to individual merit wage increases.

■ *NLRB* v. *Allison & Co.*, U.S.C.C.-A., 6th, January 26, 1948, Martin, C.J.

During the course of contract renewal negotiations with the labor union exclusively representing the employer's production workers the employer refused to bargain as to merit wage increases as requested by the union. The final bargaining contract provided for a minimum wage scale but made no mention of merit increases. Subsequently, the employer gave merit increases to thirty-one of some 110 of its employees. Although requested by the union for information as to the increases given, the employer refused to furnish any data. The NLRB ordered the employer to cease and desist from refusing to bargain collectively as to merit wage increases, and to grant no merit increases without prior consultation with the union. Affirmatively ordered to bargain collectively in this respect, the employer was also ordered to furnish the union, upon request, full information as to merit wage increases, including the number of such increases, their amounts and the standards employed in arriving at such increases.

The Court granted enforcement of the order, holding that the statutory obligation of the employer, under §8 (5) of the National Labor Relations Act, to bargain collectively with representatives of its employees with respect to wages, hours and working conditions included the duty to bargain as to individual merit wage increases. The Court declared that the labeling of a wage increase as a gratuity did not obviate the fact that a gratuitous increase on the basis of merit actually effectuates changes in rates of pay and wages which are made the subject of collective bargaining by the Act. By entering into a collective bargaining agreement silent on the subject of merit increases the union did not waive the right secured to it by the Act to have a say-so as to such increases. The Court stated that although none of the Supreme Court opinions cited held directly that merit increases were to be considered within the coverage of "rates of pay" as used in the Act, it had concluded that the union might not be ignored by an employer's refusal to furnish information as to the basis of such increases, the amounts given, and the names of the recipients. As in the case of *Aluminum Ore Co.* v. *NLRB*, 131 F. (2d) 485, where the employer made "all" wage changes unilaterally, insistence here upon the right to grant wage increases to certain chosen individuals was held to constitute impermissible unilateral company action.

Simon, C.J., dissenting, was of the opinion that the employer was not guilty of an unfair labor practice and that the Board's order should not be enforced. He declared that there was nothing in the Act which precluded recognition of individual merit. Even if it might be assumed that merit increases were subject to collective bargaining, he thought that those involved here did not constitute an unfair labor practice by refusal to bargain, since the union had abandoned its demand for negotiation of merit increases and had freely entered upon an agreement without reference to them or to maximum compensation and should be required to stand by its bargain.

Labor Law. . union's failure to file affidavits and organizational and financial statements as required by the 1947 Labor-Management Relations Act does not prevent voluntary collective bargaining by union and employer.

■ *Memorandum Opinion*, Solicitor of Labor, January 23, 1948.

In a memorandum opinion issued by the Solicitor of Labor, it is stated that the National Labor Relations Act, as amended by the 1947 Labor-Management Relations Act, does not prohibit employers from bargaining collectively with unions representing

a majority of their employees even though the union has not filed the non-Communist affidavits and organizational and financial statements provided for in §9 (f) and (h) of the Act. An abstract of statements made by the Solicitor in reaching this conclusion follows. The inability of a union to secure Board certification because it has not filed this data does not disqualify the union from acting as the bargaining representative of the employees. The required filing only operates as a condition precedent to resort by unions to the Board in seeking protection against unfair labor practices by an employer. It has no application to the practice of free collective bargaining by unions and employers. Consequently, there is nothing in the Act which restricts the right of employers voluntarily to bargain and contract with an otherwise qualified union. Further, dismissal by the Board of a petition for a representation election filed by an employer does not bar the employer from continuing to bargain with an uncertified union of his employees which has not filed the required affidavits and organizational and financial data.

The Solicitor, however, does not express any opinion as to whether, notwithstanding a union's inability to obtain relief from the NLRB because it has not filed the requisite affidavits and organizational and financial statements, there is a duty upon an employer, enforceable by equity proceedings in the federal courts, to refrain from refusing to bargain with such a union representing a majority of his employees.

Municipal Corporations . . Court will not interfere with action of Board of Education in refusing to bar use of school property by Communist, Fascist or Nazi organizations.

■ *Stanton* v. *Board of Education of City of N. Y.*, N. Y. Sup. Ct., Spec. Term, Pt. I, Kings County, January 26, 1948, Froessel, J. (Digested in 16 U. S. Law Week 2391, February 17, 1948).

Application was made for an order reviewing the determination made by the Board of Education of New York City in refusing to adopt a resolution which would deny the use of school buildings and grounds after school hours to the Communist Party, the American Youth for Democracy organization, and any other group believed by the Schools Superintendent to be of a Communist, Nazi or Fascist nature. The decision of the Board had been reached by a vote taken after due deliberation and a public meeting on the question.

The Court held that, under state laws and until the legislature directed otherwise, boards of education have discretion as to the allowable use of school-houses, within the limits of the Education Laws §414. Since there was no demonstration that the action of the Board violated a specific statute or was essentially arbitrary, the Court refused to interfere with the determination reached by such a public body. The Court referred to the legislature for careful consideration the question of possible implementation of the penal laws so as to outlaw, in some measure at least, so-called subversive organizations which are found to be a menace to our institutions. However, the Court stated that under the existing laws of the State of New York Communists might legally function as a political party or entity, despite "widespread public aversion".

National Labor Relations Board . . delegation of certain powers of NLRB to its General Counsel.

■ *Code of Federal Regulations*, Tit. 29, Ch. II, Pt. 204, §204.3 (13 Fed. Reg. 654).

In the *Federal Register* of February 13, 1948, the NLRB issued a statement of the delegation of certain powers of the Board to its General Counsel. The memorandum sets forth the statutory jurisdiction and the various delegated functions of the General Counsel, some of the details of which follow. He exercises general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees of the regional offices. *Inter alia*, General Counsel is fully empowered to handle the various phases of complaint cases except that contempt proceedings may be initiated only on direction of the Board. In representation cases under §9 of the amended National Labor Relations Act and §203 (c) of the 1947 Labor Management Relations Act appeals lie to the Board from the General Counsel's refusal to issue a notice of hearing or his dismissal of any petition. He is in charge of election proceedings under §9 (e) of the Act. He is required to conduct the hearings in jurisdictional dispute cases provided for in §10 (k) of the Act up to the point of assumption of jurisdiction by the Board for decision. His authority to initiate and prosecute injunction proceedings under §10 (j) and (l) is full and final. The statement also outlines General Counsel's duties in connection with subpoenas, rules and regulations, State agreements, liaison with other governmental agencies, anti-Communist affidavits, miscellaneous litigation and personnel.

Further Proceedings in Cases Reported in this Division

The following action has been taken in the U. S. Supreme Court:

Reversed and Remanded: *U. S.* v. *U. S. Gypsum Co.*—Sherman Act (32 A.B.A.J. 880; December, 1946; 33 A.B.A.J. 726; July, 1947).

Denied motion for leave to file petition for writ of mandamus: *Fisher* v. *Hurst et al., Justices, and Board of Regents of University of Oklahoma* —Constitutional Law (*sub nom. Sipuel* v. *Board of Regents of University of Oklahoma*, 33 A.B.A.J. 722; July, 1947; 34 A.B.A.J. 64; January, 1948).

The Third U. S. Circuit Court of Appeals, on February 3, 1948, amended its opinion of September 23, 1947: *Hartmann* v. *Time, Inc.*— Libel and Slander (34 A.B.A.J. 153, February, 1948; *supra*, p. 322. Judgments, April, 1948).

Practising lawyer's guide to the current LAW MAGAZINES

ADMINISTRATIVE LAW—*"Administrative Procedure and Civil Liberties":* A well-annotated article in the *Cornell Law Quarterly* for November, (Vol. XXXIII—No. 2; pages 235-247) considers the extent of the limitations upon administrative procedure imposed by the constitutional guarantees of freedom from unreasonable searches and seizures, freedom from compulsory self-incrimination, the right to a jury trial, and the right to procedural due process of law. Although this study, by Foster H. Sherwood, formerly an analyst with the federal government and now Assistant Professor of Political Science at the University of California at Los Angeles, will be an addition to the libraries of attorneys active in the field, not many lawyers will subscribe to his opinion that the Administrative Procedure Act may damage irreparably the balance between the general welfare and individual rights of person and property. (Address: Cornell Law Quarterly, Ithaca, N. Y.; price for a single copy: $1.00).

ADMINISTRATIVE LAW—*"How Courts Interpret Regulations":* During the first ten months of 1947, federal administrative agencies published more than 7000 pages of material in the *Federal Register.* The timeliness of the above-entitled article in the December issue of the *California Law Review* (Vol. 35—No. 4; pages 509-544) hardly needs further demonstration. Frank C. Newman, the author, a Lecturer in Law at the University of California, has made a thorough study of the authorities in the field and sets forth his conclusions in the article in a concise and readable style. He argues that the failure of the Courts to employ interpretative precedents has resulted in a hodge-podge of theories, rules and cautions that can be exploited by opposing lawyers in almost every dispute, and suggests that the initial step in the interpretation of regulations should be, in every instance, a careful consideration of the purpose of the regulation. (Address: California Law Review, School of Jurisprudence of the University of California, Berkeley, Cal.; price for a single copy: $1.25).

ADMIRALTY—*"The Amphibious Tort Problem in Collision Cases":* A discussion of the problems presented by refusals of admiralty Courts to take jurisdiction of damage claims arising from a collision between a vessel and a land structure if the action is commenced by the owner of the land structure, was given in the August issue of the *Brooklyn Law Review* (Vol. XIII—No. 2; pages 129-145). The author points out that there is little basis for the conclusion that admiralty jurisdiction is dependent upon the injury being consummated on navigable water, beyond the fact that this artificial locality-tort test is a deep-rooted precedent in American admiralty law. After illustrating how the choice of forum afforded to the ship-owner and the denial of the use of admiralty Court to the owner of the land structure in actions for damages caused by such collisions result in serious disadvantages to the owner of the land structure, the author suggests that admiralty jurisdiction should be extended in this regard, by judicial decision or an Act of Congress or, if necessary, by an amendment to the Constitution. (Address: Brooklyn Law School, 375 Pearl Street, Brooklyn, N. Y.; price for a single copy: 85 cents).

AVIATION LAW—*"Compulsory Interchange of Aircraft Between Connecting Air Carriers":* The leading article in the January issue of the *Virginia Law Review* (Vol. 34—No. 1; pages 1-25) by Howard C. Westwood and Ernest W. Jennes, of the District of Columbia Bar, considers the possibility of improving air service through increasing the scope of one-plane service beyond the route of any particular carrier. The question is studied in relation to the earlier decisions of the Interstate Commerce Commission and the Courts on the scope of regulatory authority to require through railroad service. The authors conclude that the Civil Aeronautics Board already possesses ample authority for "re-fashioning airline service so as to promote public convenience without adding wasteful duplication of operations among the carriers." (Address: Virginia Law Review, Clark Memorial Hall, Charlottesville, Va.; price for a single copy: $1.00).

BANKRUPTCY—*Service of Process—"Where There's A Will There's A Way":* Professor Arthur John Keefe, of the Cornell Law School, and three students at the School, have collaborated in an article in the November issue of the *Cornell Law*

Editor's Note

Members of the Association who wish to obtain any article referred to should make a prompt request to the address given with remittance of the price stated. If copies are unobtainable from the publisher, the *Journal* will endeavor to supply, at a price to cover cost plus handling and postage, a planograph or other copy of a current article.

Quarterly (Vol. XXXIII–No. 2; pages 248-258). They express the view that the doctrine limiting the service of process under Chapter X of the Bankruptcy Act to the territorial boundaries of the U. S. District Court should be relaxed in the interest of a more efficient system of reorganization and bankruptcy, and that a broad interpretation of the Act would permit extra-territorial service of process where expedient. (Address: Cornell Law Quarterly, Ithaca, N. Y.; price for a single copy: $1.00).

CONTRACTS–*"What Is a License?"*: A summary of the rights and privileges contained in a license to use another person's land, as developed by the common law of England, is presented in a carefully-prepared article by H. W. R. Wade in the January issue of *The Law Quarterly Review* (Vol. 64; pages 57-76). The author considers particularly questions as to the revocability of a license and concludes that it is both logical and reasonable to treat contractural licenses as in every way subject to the agreement between the parties. (Address: The Law Quarterly Review, The Carswell Co., Ltd., Toronto, Ont., Canada; price for a single copy: $1.75).

CONTRACTS–*Quasi-Contracts–"Equity and Quasi-Contract"*: The January issue of *The Law Quarterly Review* (Vol. 64; pages 46-56) gives a concise exposition of the relation of common law rules as to quasi-contract and decrees in equity, in an article under the above quoted title by Professor P. H. Winfield, an outstanding authority on the law of contracts in England. While the emphasis is upon decisions of the British Courts, the analytical discussion is illuminating on the same problems as they may be met in American jurisdictions. (Address: The Law Quarterly Review, The Carswell Co., Ltd., Toronto, Ont., Canada; price for a single copy: $1.75).

LANDLORD AND TENANT–*"The Nature of a Lease in New York"*: In a review of many leading cases in the November issue of the *Cornell Law Quarterly* (Vol. XXXIII –No. 2; pages 165-194), Milton R. Friedman, of the New York Bar, author of articles on real property law, concludes that most of the New York law of leases is based on a lease as a conveyance and the rest on a lease as a contract. The examples given of the divergent results produced by the application of conveyancing rules in some situations and contract rules in others make this discussion a useful working reference as well as a valuable general survey of lease law. (Address: Cornell Law Quarterly, Ithaca, N. Y.; price for a single copy: $1.00).

LAWYERS – *"Integration of the Bar and Judicial Responsibility"*: If you wish to read a point-by-point analysis and refutation of an opinion by a State Supreme Court, a good publication to send for is the December number of the *Minnesota Law Review* (Vol. 32–No. 1; pages 1-27), in which Professor Maynard E. Pirsig "really takes apart" the opinion of the Supreme Court of Wisconsin in *Re Integration of the Bar*, 249 Wisc. 523, 25 N. W. 2d 500, which declined to perform the plainly judicial function of organizing and putting into operation the integrated State Bar which had been created by an Act of the State Legislature of Wisconsin. The American Bar Association has taken no definitive stand that we know of, as to integration of the Bar; the choice of structure, between voluntary and integrated form, is for the Bar, Courts, legislature and people of each State. Yet Professor Pirsig's devastating analysis of the Court's *a priori* argument that the proposed relationship between Courts and Bar would impose unwarranted restraints on lawyers, individually and collectively, and unjustified responsibilities on the Courts, sounds as archaic as an argument against the cotton gin or electrically-driven machinery. Surely the Court does not believe that the structure of "law practicing by collectives", described in our March issue (page 191) would vouchsafe greater freedom for lawyers. The author thinks that Bar integration in Wisconsin is probably dead as long as all members of its present Supreme Court remain alive, but he vividly represents that "the spectacle in Wisconsin is hardly an example to be followed in any other State". (Address: Minnesota Law Review, Minneapolis, Minn.; price for a single copy: $1.00).

LEGISLATION – *"Standards for Congressional Investigations"*: In the March issue of *The Record* of the Association of the Bar of the City of New York (Vol. 3–No. 3; pages 93-100), United States District Judge Charles E. Wyzanski, Jr., of Boston, has a thoughtful and well-poised article on the above-quoted subject. It was the basis for an address he delivered before that Association on January 13. He discusses abuses as well as needs for plenary legislative inquiries; he examines most interestingly the numerous proposals for limitations and curbs, and does not favor the present codification of various of them into statute law. He suggests that Bar Association Committees be constituted to study the actual workings of Congressional investigating committees, and expresses the view that "The mere creation of such Bar Committees would have a salutary effect in alerting members of Congress to the abuses of the present system and in mobilizing professional opinion to guide Congress and the public to sensible solutions". This is an important article which will have influence, and should be widely read, regardless of the degree of agreement with it. (Address: The Record, 42 West 44th Street, New York 18, N. Y.; price for a single copy not stated).

TRUSTS AND ESTATES–*Revocation of Trusts–"Termination of Trusts in Pennsylvania"*: The steeply increased costs of living and the severe decreases in the returns from trust investments have given increasing importance to the principles of

law applicable to the termination of trusts prior to the expiration of the designated trust term. Faced with increasing financial burdens and shrinking estates, both settlors and beneficiaries have been seeking ways to avail themselves of property placed in trust at a time when conditions were much different. The problem is considered by Mark E. Lefever, of the Philadelphia Bar, in the *University of Pennsylvania Law Review* for February (Vol. 96—No. 3). The discussion centers around the statute recently enacted by the Pennsylvania legislature (Section 2 of the Estates Act of 1947), which prescribes the conditions under which trusts may be terminated or the principal encroached upon. The author summarizes the Pennsylvania case law and makes brief reference to other States which have passed laws dealing with the problem (California, New York, Oklahoma, and Texas). In New York, especially, there have been many decisions on the point in recent years. (Address: University of Pennsylvania Law School, 3400 Chestnut Street, Philadelphia 4, Pa.; price for a single copy: $1.00).

WORKMEN'S COMPENSATION—*"Current Trends in Basic Principles of Workmen's Compensation":* The *Law Society Journal* contains in its August issue (Vol. XII—No. 7; pages 611-682) the second installment of a three-part article (the first part was in the May issue) discussing the workmen's compensation Acts as construed by various State Courts. In this part of his comprehensive and well-annotated presentation, Samuel B. Horovitz, of the Massachusetts Bar (Boston), considers the meaning of the phrases "arising out of" and "in the course of" the employment, as used in workmen's compensation laws. (Address: Law Society of Massachusetts, 18 Tremont Street, Boston 8, Mass.; price for a single copy: 50 cents).

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OUR YOUNGER LAWYERS

Charles H. Burton, Secretary and Editor-in-Charge, Washington, D. C.

▪ The mid-year meeting of the Executive Council of the Junior Bar Conference was held February 21 and 22, at the Edgewater Beach Hotel in Chicago. It was the first post-war session of the Council at which all members were present.

Those attending included National Chairman T. Julian Skinner, Jr., Jasper, Ala.; last year's National Chairman, James D. Fellers, Oklahoma City, Okla.; National Vice Chairman Walter B. Keaton, Rushville, Ind.; and National Secretary Charles H. Burton, Washington, D. C. Regional representatives included: 1st Circuit, Stanley M. Brown, Manchester, N. H.; 2nd Circuit, Robert C. Bell, Jr., Stamford, Conn.; 3rd Circuit, Thomas Cooch, Wilmington, Del.; 4th Circuit, K. Thomas Everngam, Denton, Md.; 5th Circuit, Randolph W. Thrower, Atlanta, Ga.; 6th Circuit, Lewis R. Donelson III, Memphis, Tenn.; 7th Circuit, George E. Frederick, Milwaukee, Wisc.; 8th Circuit, John S. Howland, Des Moines, Ia.; 9th Circuit, Cameron W. Cecil, Los Angeles, Calif.; 10th Circuit, Frederick L. Hall, Dodge City, Kans.; District of Columbia, Thomas M. Raysor, Washington, D. C.

Many Others in Attendance

Former National Chairmen James P. Economos of Chicago, Charles S. Rhyne, Washington, D. C., and Lyman M. Tondel, Jr., New York City, also attended the meeting. Committee chairmen present included: Nicholas Conover English, Newark, N. J., Committee to Aid the Small Litigant; Elizabeth Carp, Dallas, Tex., Committee on Cooperation with Junior Bar Groups; Victor S. Axelroad, New York City, Committee on Relations with Law Students; Calvin M. Cory, Las Vegas, Nev., Traffic Court Improvement Program; W. Carloss Morris, Jr., Houston, Tex., Public Information Program; Maurice Frank, South Bend, Ind., Legislative Drafting; Ulrich Schweitzer, New York City, and Herman Maddox, Editor and Business Manager, respectively, of *The Young Lawyer.*

Decisions as to 1948 Activities

It was decided not to distribute questionnaires to the entire JBC membership this year. Each new member enrolled since July, 1947, (the date when the last questionnaires were distributed) will be asked as to his interests and the activities in which he would like to participate. Jacob M. Lashly, a former President of the Association, requested that the JBC assist in the work of his Committee in aid of lawyers in devastated countries. His request was referred to the Activities Committee for study and recommendations as to how the JBC can best aid in carrying forward this worthwhile program.

The name of the Committee to Aid the Small Litigant was changed to the Committee on Legal Aid. Chairman Nicholas Conover English reported that effective steps were being taken to assist in the establishment and implementation of Legal Aid Bureaus in various parts of the country. A moving picture, "The Paradine Case", is being shown in major cities and through the assistance of local Bar Associations the

receipts from one night's performance in each of these cities is to be turned over to the Association's Legal Aid Committee for the promotion of legal aid work. The Council voted to support this worthwhile benefit project. The name of the new committee to be known as that on Justice of the Peace and Similar Courts was approved by the Council.

Committee on Procedural Reform Has More Work

John S. Howland reported that the Committee on Procedural Reform Studies has recently discovered that in the original plans for its study a survey covering the field of evidence was to have been made. He stated that this survey has not yet been made in any State. Reporters are being appointed for each State to complete this survey.

James D. Fellers, one of the JBC representatives on the joint Committee in charge, reported that its name has been changed to the Committee on Continuing Legal Education. He reported also that a grant of $250,000 had been secured by the Committee from the Carnegie Institute to promote this activity.

The Council members' reports reflected the great amount of effective Bar work which is being done in each of the circuits. The Conference representatives who attended the mid-winter meeting are confident that the ground work had been laid for a full and successful Conference year.

Association Calendar

April 22—First Date for Submission of other Nominating Petitions for Officers of the Association, Chairman of the House of Delegates and Four Members of the Board of Governors

May 17-19—Meeting of the Board of Governors, Mayflower Hotel, Washington, D. C.

May 22—Deadline for Receipt of other Nominating Petitions

June 1—Deadline for Receipt of Ballots for State Delegates

June 4—Meeting of Board of Elections to Count Ballots and Announce Results of Voting for State Delegates

September 6-9—71st Annual Meeting of the Association, Seattle, Washington

1948 ANNUAL MEETING • SEATTLE, WASHINGTON

September 6-9, 1948

The Seventy-First Annual Meeting of the American Bar Association will be held at Seattle, Washington, September 6 to 9, 1948. Further information with respect to the meeting will be published in the Journal from time to time.

HOTEL ACCOMMODATIONS

Headquarters Hotel Olympic (Fourth & Seneca Streets)

Reservations for members will be made in the following Seattle Hotels:

BENJAMIN FRANKLIN (Fifth & Virginia)
CAMLIN (Ninth & Pine)
CLAREMONT (Fourth & Virginia)
EXETER (Eighth & Seneca)
FRYE (Third & Yesler Way)
GOWMAN (Second & Stewart)
HUNGERFORD (Fourth & Spring)
MAYFLOWER (Fourth & Olive Way)
MEANY, EDMOND (E. 45th & Brooklyn; University District)
MOORE (Second & Virginia)
MORRISON (509 Third Ave.)
NEW RICHMOND (308 Fourth Ave., So.)
NEW WASHINGTON (Second & Stewart)
ROOSEVELT (Seventh & Pine)
SPRING APT. HOTEL (Fifth & Spring)
VANCE (Seventh & Stewart)
WASHINGTON ATHLETIC CLUB

REGISTRATION FEE

REQUESTS FOR RESERVATIONS FOR HOTEL ACCOMMODATIONS MUST BE ACCOMPANIED BY PAYMENT OF $5.00 REGISTRATION FEE FOR EACH LAWYER FOR WHOM RESERVATION IS REQUESTED. The Board of Governors solicits the cooperation of the members of the Association in thus facilitating the handling of the registration fee and in partially defraying the increasing expense of the Annual Meeting. In the event that it becomes necessary to cancel a reservation, the registration fee will be refunded, PROVIDED NOTICE OF CANCELLATION IS RECEIVED AT HEADQUARTERS NOT LATER THAN AUGUST 16, 1948.

Explanation of Type of Rooms

(Because of shortage of single rooms, please arrange to share double room with another, whenever possible).

A single room contains either a single or double bed to be occupied by one person. A double room contains a double bed to be occupied by two persons. A twin-bed room will NOT be assigned for occupancy by one person. A parlor suite consists of parlor and communicating bedroom containing double or twin beds. Additional bedrooms may be had in connection with the parlor.

To avoid unnecessary correspondence, members are requested to be specific in making requests for reservation, stating hotel, First and Second Choice, number and type of room or rooms required, names of persons who will occupy same, definite arrival date, and, if possible, information as to whether such arrival will be in the morning or evening.

As it is not possible to designate definite rates with respect to hotel accommodations, please indicate approximate rate desired, and we will endeavor to comply with your request, if possible.

Requests for reservations, together with $5.00 registration fee, should be addressed to the RESERVATION DEPARTMENT, AMERICAN BAR ASSOCIATION, 1140 NORTH DEARBORN STREET, CHICAGO 10, ILLINOIS.

Announcement of Essay Competition as to State Administrative Law

■ The Section of Administrative Law of the American Bar Association announces its inauguration of an essay-writing contest on the subject of State Administrative Law. Each entrant will be required to write about the State administrative law of the State in which he has been admitted to the practice of law. If he has been admitted in more than one State, he should write about the law of the State in which he practices.

The Section will give a prize of $1000 to the writer whose essay is adjudged to be the best. All essays must be submitted to the Secretary of the Section on or before November 1, 1948. The secretary is Miss Patricia H. Collins, Assistant Solicitor General's Office, Department of Justice, Washington 25, D. C.

The contest is open to all members of the American Bar Association, with the exception of officers of the Section and members of its Council. No essay will be accepted if previously published. All rights and title to essays submitted must be deemed to be the property of the Section. Any copyright to an essay must be assigned to the Section.

Each essayist should review and analyze the administrative law of his State, both legislative and as evidenced by judicial decision. He should accompany all statements with citations to sources. He may make comparisons with administrative law of other jurisdictions, but his theme must be the administrative law of his own State.

Each essay must be restricted to 4000 words, including quoted matter and citations in the text. Footnotes and annotations will not be included in the computation of the number of words, but excessive use of such material may be penalized by the judges of the contest. Clearness, brevity of expression and thoroughness of analysis will be taken into consideration.

Inquiries concerning the contest should be addressed to Mr. Omar C. Spencer, Chairman, Contest Committee, Yeon Building, Portland 4, Oregon.

GEORGE ROSSMAN, *Chairman*
Section of Administrative Law

Tax Notes

■ Prepared by Committee on Publications, Section of Taxation, Joseph S. Platt, Committee Chairman.

Gifts, Inducements and Contributions to Capital—Basis for Income Tax

When gift property is sold by a donee his gain is computed on the basis of the donor's cost. Section 113 (a) (2). And the same basis must be used to determine the donee's annual depreciation deductions in respect of the property. The applicability of this provision to property transferred to the taxpayer as an "inducement" was involved in two recent Tax Court cases: *McKay Products Corporation*, 9 T.C.—No. 141 and *Brown Shoe Company, Inc.*, 10 T.C.—No. 35.

The taxpayer in the *McKay Products* case claimed depreciation deductions for 1941 and 1942, in respect of a manufacturing plant acquired in 1935 by its predecessor, Belle Knitting Corporation, in the following manner: In that year the citizens of Sayre, Pennsylvania, and neighboring towns took steps to relieve the unemployment then existing in their community. Acting through a nonprofit corporation they purchased a vacant manufacturing plant at a cost of $292,000 and after some negotiations with Belle, then located at Lebanon, Pennsylvania, agreed to convey the plant to Belle as an inducement to Belle to remove its operations to Sayre. The move was made and the transaction was consummated. Was this a "gift" within the meaning of Section 113 (a) (2) so as to entitle the taxpayer to take depreciation on the basis of the donor's cost, $292,000?

The Tax Court said no. True, Belle had given no consideration in a money or property sense and had no cost of its own, but it had suffered a detriment in the contract sense. The transaction was therefore not a gift and Belle had acquired no basis for depreciation. The Court relied heavily on *Detroit Edison Co. v. Commissioner*, 319 U. S. 98, involving payments by farmers to an electric utility to cover the cost of extending its lines.

The facts of the *Brown Shoe Company* case were very similar and the result was the same: No basis for depreciation in respect to the "inducement properties" acquired directly from the community group. This case also involved other properties which the Commissioner contended, had been acquired by the taxpayer with "inducement money" paid to it by the contributing com-

munity as a part of the same transaction. In the absence of evidence that the money was earmarked for this specific purpose the Court held that these properties had been *purchased* by the taxpayer and a cost basis for depreciation thereby established. The moral is plain: Make the contribution in money and let the taxpayer buy the plant out of its general funds. The end result is the same as though the plant had been purchased by the community group and then transferred to the taxpayer, but the tax consequences are quite different.

In neither case does the Court mention Section 113 (a) (8) requiring the use of the transferor's cost or other basis in the case of property received by a corporation "as a contribution to capital". Under Regulations 111, Section 29.113 (a) (8)-1, this section is applicable, not only to acquisitions from shareholders, but also to property received by a corporation "from any person as a contribution to capital". Capital subsidies made for inducement purposes by governments and private groups are excluded from the gross income of the recipient as contributions to capital *(Edwards* v. *Cuba R. R. Co.,* 268 U. S. 628) even though usually not gratuitous in the contract sense. If the same principles apply in determining the transferee's basis under Section 113(a) (8), as the regulations seem to indicate, these decisions, disallowing depreciation in respect of properties received directly from the community group, may be open to question.

On the same general subject see *Fairid-Es-Sultaneh* v. *Commissioner,* 160 F. (2d) 812, involving a donee's basis in respect of certain property acquired under an antenuptial contract. This case is noted in 33 A.B.A.J. 630; June, 1947.

Some Recent Cases of Interest to Lawyers

Commissioner v. *Heide* (CCH Tax Service, par. 9122). The Second Circuit, reversing the Tax Court, disallows the deduction under Section 23 (a) (2) of moneys paid by the trustee of a family trust in settlement of claims filed against him by the beneficiaries. The claimants had charged the taxpayer (trustee) with negligence. In holding that the payment was not a "necessary" expense the Court emphasizes the fact that it was within his power to avoid it. Congress did not intend "to subsidize delinquent trustees in this way".

Friedman v. *Delaney* (CCH Tax Service, par. 9174). The Massachusetts District Court disallows the deduction by a lawyer of moneys paid in discharge of a moral obligation. The taxpayer had given his professional assurance to certain of his client's creditors that money would be forthcoming to liquidate a proposed settlement. Accordingly, when the client and his wife (who was to furnish the money) declined to follow through, the taxpayer paid the amount out of his own pocket. Pointing out that the direct payment of the client's debt would not constitute a deductible expense or loss, the Court finds no basis for a different result merely because the lawyer considered himself under a moral obligation to make the payment.

Letters to the Editors

Comments on Argument Against Federal Aid to Housing

To the Editors:

Your statement in the JOURNAL (February issue, page 91) with reference to federal housing deserves tremendous applause. It is easy to agree with you that Senator Taft is no starry-eyed socialist, and it is also easy to agree with Senator Taft in his statement that private housing, uninspired by the Government, has wholly failed to meet the housing needs of the American people.

Mr. Russell's statement that we are further along with our housing program than Russia or Great Britain seems a rather weak statement, particularly when you consider that both Britain and Russia had a rebuilding program necessitated by the destruction of the war. We in this country claim that our standard of living is the highest in the world, and that we can and do produce consumer goods in an amount equal to the combined total of the rest of the world. With such a record, it seems idle to compare any phase of our life with other countries who are struggling to catch up with us. Rather than to make such comparisons, we should try to solve the housing problem on the basis of American experience. This is no brief for the Taft-Ellender-Wagner bill (S. 866; 80th Congress), but rather it is an appeal to reason, and to the members of the Bar to open their eyes to realities of the situation.

There are many conclusions made in Mr. Russell's article that are suspect, because they ignore facts which he apparently finds distasteful. It is to be hoped that you can secure an article, prepared by some open-minded person, which will factually reply to Mr. Russell's thesis.

I wish to heartily thank you for expressing the views of a great many of your members in your editorial comment on this subject.

WHITWORTH STOKES

Nashville, Tennessee

"Not the Time To Make More Socialists Gratuitously"

To the Editors:

Hearty congratulations to you and your Board of Editors for your excellent editorial on "Federal Action as to Housing" in your December issue (page 1207) and your staunch, friendly reply to Horace Russell in the February issue (page 91).

Mr. Russell's able reply is definitely weakened in persuasiveness by its intemperance and its name-calling, as well as by its failure to suggest any adequate means by which our housing shortage may be relieved. If we have no better answer to the principles of the pending measure than to denounce and proscribe them as "socialist", and its authors as "missionary Socialists", then we are giving a glamor to socialism, in the eyes of the homeless, to which it is not entitled.

This is not the time to make more socialists gratuitously by refusing aid to the homeless, and insisting rigidly that even the weakest link in our free enterprise system should remain weak, as a tribute to our devotion to the abuses as well as the excellences of our free enterprise system.

My pride in my membership in the American Bar Association is increased by observing that the Board of Editors of our JOURNAL can speak out forthrightly in favor of the correction of such a fundamental lack as the want of homes for our people, particularly for our returned veterans. It is by such measures that we increase the attachment of our people to our American way of life, with its freedom of opportunity.

BENJAMIN H. KIZER

Spokane, Washington

Give Private Enterprise a Chance To Relieve Housing Shortage

To the Editors:

This letter is comment upon the subject discussed in "Federal Aid to Housing", in the February JOURNAL (page 89).

Lawyers in the general practice, dealing so constantly with the grassroots of private enterprise and of government, should certainly have an opinion on the question of housing. In order that the Association may reach a sound decision on this question, many lawyers should voice their "horseback" opinions. Here is an outline of mine:

1. Congress and OPA have deliberately dealt unfairly with landlords. Congress and OPA have retained a war-time "price-freeze" on this particular class, which politically has not been numerous enough or well-organized enough to take care of itself.

2. That unfair treatment has boomeranged to drive almost all the rental properties off the market; has compelled millions of tenants to buy or build properties at a figure of approximately 200 to 300 per cent of pre-war prices. *That kind of "protection" is a farce* to tenants, buyers and owner-builders!

3. Thus, Congress and the OPA have failed in the original objective to furnish low-cost (or less-than-cost) housing to any one. Congress and the OPA have persisted in their original error of penalizing landlords as a class, although the failure of Congress and the OPA to reach their objective (low-cost or less-than-cost housing to tenants, buyers, and owner-builders) has long been evident to everyone. Even tenants, who have for a time unfairly received housing-at-less-than-cost, have lived and now live in constant jeopardy of being compelled to buy or build in a market inflated by an increase of 100 to 200 per cent over pre-war prices.

4. By a continued and utterly unfair price freeze (only in the rental enterprise, and not elsewhere) and by government threats to go into the housing business, Congress and the OPA have deliberately, if not designedly driven landlords to eventually sell all existing rental properties and to refuse to build any new rental properties.

5. Congress and the OPA are now using their own miserable failure in a rental and building program to urge that private enterprise can not meet the problem. Congress and the OPA have deliberately, if not designedly, persisted in a course which has created an emergency in housing. *It is now presenting this self-created emergency to suggest federal housing as the only answer!*

6. The jurisdiction of the OPA if it is continued should be trimmed down to the prosecution of extreme instances (not many) of greedy landlords who might (if uncontrolled) charge exhorbitant rentals.

7. Congress and the OPA should at once announce as a definite and permanent program, and gradually permit, a reasonable rise in rentals to compensate for cost or replacement cost of rental housing plus a fair return for investment and management. Private enterprise will quickly do the rest.

8. If there is a public situation (and there may be) which requires, now and for long years to come, that tenants receive *housing-at-less-than-cost*, the public through its government and not the landlords, should subsidize such housing, to be provided by private enterprise.

9. Thus, let's give private enterprise (the people with the experience and the know-how in housing) a fair chance to function, by the prospects of a reasonable profit. Let's give private enterprise a chance to make good without having to meet government-in-housing-at-less-than-cost competition. Government in business never competes fairly; never uses the yardstick that private business has to use; never has any lack of credit to show up its mistakes or stop its proven follies; always uses its prestige to upset our business system and not only for the period of its self-created emergency but for years to come.

It is time for government to give landlords, investors, and builders the definite assurance that the government will stay out of the building business and that private enterprise (particularly landlords) will no longer be unfairly asked to furnish housing-at-less-than-cost. Surely the American Bar Association will take that stand.

WILBUR J. BRIDGES

Des Moines, Iowa

EDITOR'S NOTE: Mr. Bridges' views will be read with interest, as those of a valued member of our Association since 1937. By no means all of our readers will agree with his reiterated linking of the "Congress and the OPA" as sharing a joint responsibility for the inadequacy of housing. The recommendations made on this subject by the House of Delegates on February 24, as reported elsewhere in

this issue, will be regarded by many as the desirable lines for prompt action by the Congress.

W. L. R.

What Should New York Do About New Jersey Lawyers?

To the Editors:

In the January JOURNAL (page 69), there is a letter by Mr. Robert Gibson pertinent to New Jersey's requirements for admission to practice.

Prescinding entirely from the opinions expressed by Mr. Gibson but sticking to the same point, the attitude of the State of New York in connection with this matter has for some time puzzled me. The natural proximity of New York and New Jersey makes it quite convenient for attorneys properly admitted to the Bar to practice in either State. New York permits attorneys from New Jersey to cross the river and become admitted on motion after a brief residence period. New Jersey, as Mr. Gibson points out, has adopted an entirely different attitude.

It seems to me in the absence of a reciprocity agreement between the States, New York owes the attorneys of that State an explanation as to why its requirements are less strict than those of its neighbor.

EDWARD F. CAVANAGH, JR.
New York City

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Bar Association News

Richard B. Allen • Editor-in-Charge

Association of the Bar Tries "Rule" for Interesting Debate

■ When the Association of the Bar of the City of New York convened for its stated meeting on March 9, the principal item on its calendar was a resolution asking amendment of the Elston bill (H.R. 2575) as to military justice. The attendance indicated that considerable debate would take place on this, as a determined effort was to be made to convince those present that the Association should not support the stand voted by the House of Delegates on February 23, in endorsing again the recommendations of the Vanderbilt Committee, as reported elsewhere in this issue, for the ending of "command control" over the quasi-judicial proceedings of Army courts martial.

President Harrison Tweed placed before the meeting a "rule", doubtless of his own devising, for conducting the debate. A half-hour of time was to be given to each the Association's Committee and the organized opposition to the Committee's resolution, each side to control and divide its own time. Then half an hour was to be available for speakers from the floor, those for and against the resolution to alternate, under a five-minute rule. All of the time limitations were to be strictly enforced. At the end of the ninety minutes, a vote was to be taken on the resolutions or on any action moved as to them, without further debate. The required two-thirds' vote of members present adopted this special parliamentary "rule", which resembled those resorted to by the Rules Committee of the national House of Representatives to enable prompt majority action.

The discussion proceeded, and the result was a vivid and interesting debate. The Committee on Military Justice submitted the following resolution and stated that it had prepared appropriate amendments to the Elston bill to effectuate it:

> RESOLVED, that this Association urges amendment of H. R. 2575 to provide (a) that the power to appoint courts, assign defense counsel and review sentences be transferred from command to an independent Judge Advocate General's Department, reserving to command the right to refer cases for trial, control the prosecution and exercise clemency with respect to sentences; (b) that both prosecutors and assigned defense counsel must be lawyers; (c) that defense counsel shall have the opportunity to present their views on review; and (d) that a civilian commission be constituted continuously to study the operations of military justice and make periodic recommendations for its improvement; and
>
> BE IT FURTHER RESOLVED, that this Association authorizes its Special Committee on Military Justice, alone or in conjunction with others likeminded, to take all proper steps necessary or desirable to carry out the foregoing resolution.

The Committee stated its considered judgment to be "that the Elston bill fails to accomplish essential reforms. If the bill is amended to check command control, it can still become an effective instrument of reform. Failing amendment there will be the appearance, but not the substance, of reform; and the opportunity to create a fair and impartial system of military justice will have been frittered away." The Committee called attention to two further aspects of its proposals.

> First: A permanent civilian advisory commission should be created in the Office of the Secretary of Defense, continuously to observe the operations of military justice and to make periodic recommendations to the Secretary for its revision.
>
> Second: On review, defense counsel should be offered an opportuntiy adequately to present substantial errors committed at the trial. The present system affords no such opportunity as a matter of right.

Colonel Frederick V. P. Bryon, Chairman of the Committee, made the opening argument, and was followed by Leonard M. Wallstein, Jr. Former Supreme Court Justice Philip J. McCook, J. Howard Rossback and Former Secretary of War Robert P.

Patterson, divided the time in opposition. Judge Patterson made his plea against (a) of the resolution. Then George A. Spiegelberg closed the debate for the Committee, of which the other members were Arthur E. Farmer and Richard H. Wels.

Animated speeches under the five-minute rule followed. Practically every speaker for or against the resolution had had field experience with military justice. Particularly the young line officers of World War II gave vivid accounts of what they had seen as to command control over courts martial. The debate was not at all in generalizations.

At its close, a motion to exclude special courts martial from the resolutions was defeated. The Committee's recommendations were then adopted by a vote of 130 to 48. The Association thus aligned itself staunchly in support of the position taken by the House of Delegates and many large local Bar Associations. The belief was practically unanimous that President Tweed's "rule" had worked fairly and admirably, and enabled the adjournment of the meeting at an early hour.

Before the action on the Elston bill, the Association's Committee on the Bill of Rights offered the following which its Chairman, Henry A. Johnston, said had been embodied in legislation passed in Albany the day before:

> RESOLVED, that this Association favors the enactment in New York State of a fair educational practices law providing for the establishment within the Education Department of machinery for (1) investigation of discrimination in admissions to educational institutions at the post-secondary school level because of race, religion, color or national origin; (2) use of educational, conciliatory and other informal methods looking toward the elimination of such discrimination, and (3) issuance by the Board of Regents after public hearings of cease and desist orders, enforceable in the Courts, such law to provide exemption to religious or sectarian institutions insofar as distinctions based on religion are concerned and to exempt completely institutions not receiving public funds or tax exemption.

No one took the floor in opposition to the resolution, but there was a substantial negative vote heard when it was passed.

The vigilance of the Association in matters affecting the State judiciary was instanced when, at the opening of the meeting, Former Corporation Counsel Paul A. Windels took the floor to protest pending bills in the State Legislature to create an additional county judge in Bronx County, an additional surrogate in King's County (Brooklyn), and an additional surrogate in New York County. He characterized these as plainly the products of bi-partisan political deals, as no survey had shown the need for the creation of these additional judicial offices. He offered a resolution strongly opposing the bills "in the absence of an authoritative finding of need". As the Bronx County bill had passed the Legislature the day before, Mr. Windels' resolution was supplemented by the creation of a special committee to call on Governor Dewey and oppose this bill and any of the others if passed. The resolution as amended was adopted with one dissenting vote.

FORMER PRESIDENT CARL B. RIX, of the American Bar Association, addresses the Fifth Conference of the Inter-American Bar Association, convened in Lima, Peru, November 25 to December 8. Left to right are Hernando de Lavalle, President of the Inter-American Bar Association; Jose Luis Bustamante y Rivero, President of Peru; George M. Morris, of the District of Columbia, Chairman of the Executive Committee of the Association; Mr. Rix; and William Roy Vallance, Secretary-General of the Association.

Amendment of Soldiers' and Sailors' Civil Relief Act Urged

■ In the first proposal of its kind to come to attention, the Broward County Bar Association in Florida has stated its opinion to be in favor of repeal of the sections of the Soldiers' and Sailors' Civil Relief Act which preclude default judgments against defendants until after determination of their military status. The following was adopted:

> RESOLVED, That it is the consensus of the Bar Association of Broward County, Florida, that those sections of the Soldiers' and Sailors' Civil Relief Act which preclude the entry of defaults against defendants until after determination of their military status no longer serve a useful purpose, but instead are a hindrance to the efficient disposition of litigation; and that such provisions should be repealed.

The resolution directed the secretary to send copies of it to Florida representatives in the Congress, the *Florida Bar Journal* and this JOURNAL in an effort to secure their cooperation in behalf of repeal.

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■ President Truman has been urged by the State Bar of California to earliest possible filling of the vacancy which was created in the United States District Court for the Northern District of California by the retirement of Judge A. F. St. Sure several months ago. The resolution adopted by the Board of Governors and forwarded to President Truman

this issue, will be regarded by many as the desirable lines for prompt action by the Congress.

W. L. R.

What Should New York Do About New Jersey Lawyers?

To the Editors:

In the January JOURNAL (page 69), there is a letter by Mr. Robert Gibson pertinent to New Jersey's requirements for admission to practice.

Prescinding entirely from the opinions expressed by Mr. Gibson but sticking to the same point, the attitude of the State of New York in connection with this matter has for some time puzzled me. The natural proximity of New York and New Jersey makes it quite convenient for attorneys properly admitted to the Bar to practice in either State. New York permits attorneys from New Jersey to cross the river and become admitted on motion after a brief residence period. New Jersey, as Mr. Gibson points out, has adopted an entirely different attitude.

It seems to me in the absence of a reciprocity agreement between the States, New York owes the attorneys of that State an explanation as to why its requirements are less strict than those of its neighbor.

EDWARD F. CAVANAGH, JR.
New York City

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Bar Association News

Richard B. Allen • Editor-in-Charge

Association of the Bar Tries "Rule" for Interesting Debate

■ When the Association of the Bar of the City of New York convened for its stated meeting on March 9, the principal item on its calendar was a resolution asking amendment of the Elston bill (H.R. 2575) as to military justice. The attendance indicated that considerable debate would take place on this, as a determined effort was to be made to convince those present that the Association should not support the stand voted by the House of Delegates on February 23, in endorsing again the recommendations of the Vanderbilt Committee, as reported elsewhere in this issue, for the ending of "command control" over the quasi-judicial proceedings of Army courts martial.

President Harrison Tweed placed before the meeting a "rule", doubtless of his own devising, for conducting the debate. A half-hour of time was to be given to each the Association's Committee and the organized opposition to the Committee's resolution, each side to control and divide its own time. Then half an hour was to be available for speakers from the floor, those for and against the resolution to alternate, under a five-minute rule. All of the time limitations were to be strictly enforced. At the end of the ninety minutes, a vote was to be taken on the resolutions or on any action moved as to them, without further debate. The required two-thirds' vote of members present adopted this special parliamentary "rule", which resembled those resorted to by the Rules Committee of the national House of Representatives to enable prompt majority action.

The discussion proceeded, and the result was a vivid and interesting debate. The Committee on Military Justice submitted the following resolution and stated that it had prepared appropriate amendments to the Elston bill to effectuate it:

> RESOLVED, that this Association urges amendment of H. R. 2575 to provide (a) that the power to appoint courts, assign defense counsel and review sentences be transferred from command to an independent Judge Advocate General's Department, reserving to command the right to refer cases for trial, control the prosecution and exercise clemency with respect to sentences; (b) that both prosecutors and assigned defense counsel must be lawyers; (c) that defense counsel shall have the opportunity to present their views on review; and (d) that a civilian commission be constituted continuously to study the operations of military justice and make periodic recommendations for its improvement; and
>
> BE IT FURTHER RESOLVED, that this Association authorizes its Special Committee on Military Justice, alone or in conjunction with others likeminded, to take all proper steps necessary or desirable to carry out the foregoing resolution.

The Committee stated its considered judgment to be "that the Elston bill fails to accomplish essential reforms. If the bill is amended to check command control, it can still become an effective instrument of reform. Failing amendment there will be the appearance, but not the substance, of reform; and the opportunity to create a fair and impartial system of military justice will have been frittered away." The Committee called attention to two further aspects of its proposals.

> First: A permanent civilian advisory commission should be created in the Office of the Secretary of Defense, continuously to observe the operations of military justice and to make periodic recommendations to the Secretary for its revision.
>
> Second: On review, defense counsel should be offered an opportuntiy adequately to present substantial errors committed at the trial. The present system affords no such opportunity as a matter of right.

Colonel Frederick V. P. Bryon, Chairman of the Committee, made the opening argument, and was followed by Leonard M. Wallstein, Jr. Former Supreme Court Justice Philip J. McCook, J. Howard Rossback and Former Secretary of War Robert P.

Patterson, divided the time in opposition. Judge Patterson made his plea against (a) of the resolution. Then George A. Spiegelberg closed the debate for the Committee, of which the other members were Arthur E. Farmer and Richard H. Wels.

Animated speeches under the five-minute rule followed. Practically every speaker for or against the resolution had had field experience with military justice. Particularly the young line officers of World War II gave vivid accounts of what they had seen as to command control over courts martial. The debate was not at all in generalizations.

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by F. M. McAuliffe, President of the State Bar, reads:

> WHEREAS, a vacancy has existed for some months in the United States District Court for the Northern District of California and, from information before this Board, it appears that the work of the Court is accumulating due to an insufficient number of judges and that there is urgent and immediate need that the vacancy be filled in the interest of the proper administration of justice by said Court;
>
> NOW THEREFORE BE IT RESOLVED, That the Board of Governors of the State Bar of California respectfully requests and urges that at the earliest possible moment the President of the United States nominate a person to fill said vacancy.

Ethics Opinions of New York County Lawyers' Association

■ Two opinions have recently been announced by the Committee on Professional Ethics of the New York County Lawyers' Association.

In No. *379* the committee ruled that inclusion in a professional announcement, addressed to members of the legal profession only, of academic degrees and affiliation with educational institutions as teachers was objectionable.

In No. *380* the Committee held that under Canon 6 an attorney who is a principal officer of a real estate corporation may represent the purchaser of realty from that corporation, provided the attorney makes a full disclosure of his adverse interests to both the seller and the purchaser, and, if after such disclosure, the seller and all other parties consent to his representing the purchaser. It was added that in such a situation the attorney's conduct as broker "must conform to the high standards of professional conduct imposed by the Canons of Professional Ethics".

Wisconsin Considers "Minnesota Plan" for Expert Medical Testimony

■ A useful mid-winter institute was held by the State Bar Association of Wisconsin at Milwaukee on February 20 and 21, with James M. Douglas, Justice of the Supreme Court of Missouri, as principal speaker, on "Judicial Selection and Tenure: Missouri Plan" (see 33 A.B.A.J. 1169; December, 1947).

As a result of an address by Oscar T. Toebaas, of Madison, on "Expert Medical Testimony", the Association referred the "Minnesota plan" of expert medical testimony to a committee for report and recommendations as to whether it should be adopted in Wisconsin.

An interesting feature was a debate, staged by the Constitution and Citizenship Section, concerning the decision of the Supreme Court in *Harris* v. *U. S.* (331 U. S. 145).

First Natural Law Institute Held at Notre Dame

■ Bringing to the College of Law of the University of Notre Dame many lawyers, legal philosophers and scholars, the First Natural Law Institute was convened at Notre Dame last December 12 and 13. Its purpose was to examine the natural-law philosophy of jurisprudence and to encourage interest in that philosophy among American lawyers.

Dean Clarence E. Manion, urged that the natural law concept, inherent in the Judaeo-Christian tradition, had been "the philosophy of the Founding Fathers and found concise expression in the American Declaration of Independence as well as in the constitutions of practically all of the States". Ben W. Palmer, practicing lawyer and Special Lecturer in the University of Minnesota, predicted a reversion to "primeval chaos" should a pragmatic philosophy dominate our law, particularly American constitutional law. He declared that "the answer lies in the further invigoration and wider acceptance of scholastic natural law; that natural law which represents the experienced reason of men of many races, tongues and cultures since far before the birth of Christ; that natural law whose achievements for fifteen centuries the Carlyles have traced, to which Coke and our revolutionary forefathers appealed, and which for the Founding Fathers was the one sure basis of constitutional liberty in America, indeed in any land at any time".

Purely philosophical aspects of natural law were discussed by Professor Mortimer J. Adler, Professor of the Philosophy of Law at the University of Chicago, who described the universality of the natural law concept and showed how, to a greater or lesser degree, it may be found in the teaching of the Stoics, Plato, Aristotle and (among thinkers of modern times) even Kant and Hobbes.

Harold R. McKinnon, of San Francisco, whose controversy with Richard E. Danielson, Associate Editor of the *Atlantic Monthly*, is recalled by readers of the JOURNAL, (33 A.B.A.J. 887; September, 1947) spoke on the relationship between natural law and positive or civil law. He emphasized the evil effects of pragmatism in American law and showed the need for a better understanding of the principles of natural law by American lawyers and judges. He stressed that, whether American lawyers realize it or not, our constitutions make it necessary for judges to apply natural-law concepts in their interpretation of the "due process" clauses.

The *Notre Dame Lawyer* reports that the Institute was concluded by an address entitled "The Eternal Law", by Rev. William J. Doheny, C.S.C., the first and only American Procurator and Advocate of the Tribunal of the Apostolic Signatura and of the Sacred Roman Rota. Students of the College of Law of the University participated in discussions in connection with the addresses. The Institute was presided over by Rev. John J. Cavanaugh, C.S.C., President of Notre Dame, and the Honorary Chairman was the Rt. Reverend John F. O'Hara, Bishop of Buffalo.

Opinion of Professional Ethics Committee

OPINION NO. 276

(September 20, 1947)

ADVERTISING, DIRECT OR INDIRECT — Professional Cards — Since 1937 Amendment to Canons publication not permitted other than in approved law lists.
Canons 27, 43
Opinions 11, 24, 69, 123, 182, 203, 251, 260

▪ Inquiry has been made of the Committee as to whether Canons 27 and 43, as amended in 1937, 1942 and 1943, permit the publication of a professional card in any publication other than a law list.

While this question is ruled directly by prior opinions of this Committee, the misunderstanding with regard to the matter is apparently so general as to warrant a review of the question.

The Opinion was stated by Mr. Drinker, Messrs. Brand, Jackson, Houghton, Miller, Shackleford and Wuerthner concurring.

▪ Forty years ago when the Canons were originally adopted it was quite the usual thing for a lawyer to insert in local newspapers a card giving his name, address, telephone number and special branch of the law practiced by him. This was apparently justified by local custom, particularly in small communities.

The Canons as originally adopted did not forbid this practice, Canon 27 as adopted in 1908 providing as follows:

> The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not *per se* improper.

In 1937 the Canon was completely redrafted to read as follows:

> The customary use of simple professional cards is permissible. Publication in approved law lists and legal directories, in a manner consistent with the standards of conduct imposed by these Canons, of brief biographical data is permissible. This may include only a statement of the lawyer's name and the names of his professional associates, addresses, telephone numbers, cable addresses, special branches of the profession practiced, date and place of birth and of admission to the Bar, schools attended with dates of graduation and degrees received, public offices and posts of honor held, Bar and other association memberships and, with their consent, the names of clients regularly represented. This does not permit solicitation of professional employment by circulars, or advertisements or by personal communications or interviews not warranted by personal relations. It is unprofessional to endeavor to procure professional employment through touters of any kind. Indirect advertisements for professional employment, such as furnishing or inspiring newspaper comments, or procuring his photograph to be published in connection with causes in which the lawyer has been or is engaged or concerning the manner of their conduct, the magnitude of the interest involved, the importance of the lawyer's position, and all other like self-laudation, offend the traditions and lower the tone of our profession and are reprehensible.

It will be noticed that the original drafts provided for the *"publication* or *circulation* of ordinary simple business cards," while the amendment of 1937 provided for the "customary *use* of simple professional cards" and specified the items permissible for *"publication* in approved law lists."

Canon 43 was originally entitled "Professional Card" and provided that:

> The simple professional card mentioned in *Canon 27* may with propriety contain only a statement of his name (and those of his lawyer associates), profession, address, telephone number and special branch of the profession practiced.

This Canon was amended in 1933 to read as follows:

> A lawyer's professional card may with propriety contain only a statement of his name (and those of his lawyer associates), profession, address, telephone number, and special branch of the profession practiced. The insertion of such card in reputable law lists is not condemned and it may there give references or name clients for whom the lawyer is counsel, with their permission.

In 1937 Canon 43 was again amended, both in its title and in its text to read as follows:

> Approved Law Lists. It shall be improper for a lawyer to permit his name to be published after January 1, 1939, in a law list that is not approved by the American Bar Association.

In 1943 the Canon was amended to its present form as follows:

> Canon 43. Approved Law Lists.
>
> It shall be improper for a lawyer to permit his name to be published in a law list the conduct, management or contents of which are calculated or likely to deceive or injure the public or the profession, or to lower the dignity or standing of the profession.

This Committee had held, under Canons 27 and 43 as they were worded prior to 1937, that where local custom permitted, a simple "business" or "professional" card might be "published" in a local newspaper. *Opinion 11.*

Prior to the amendment of 1937 to Canon 27 specifying "only" what may be included in law lists, the Committee was asked whether the biographical matter in a law list might "with propriety include the age of the lawyer, date of his admission, membership in bar associations and legal fraternities and other like matters; or should be limited to the professional card sanctioned by Canon 27, defined by Canon 43."

In *Opinion 69* (1932) the Committee had held that it was improper for the bar association of a metropolitan city to publish in a daily paper a list of the law firms in that city who would agree to subscribe at certain fixed rates. This being before the formation of the special Committee on Law Lists, this Committee held that these papers were not a "law list". Mr. Evans dissented, being of the opinion that professional

cards might still be published in newspapers not a law list. He had taken no part in *Opinion 24*.

In *Opinion 123* (1934) the Committee said:

> We do not here pass upon the question of whether a law list might with propriety contain biographical data of the character enumerated in the question, where the lawyer does not directly or indirectly pay for or procure such publication and it is compiled solely for the information of persons who may desire to employ or procure the services of lawyers, and it is limited to such information as they would generally desire. See *Opinion 24*.

In *Opinion 24* (1930), above referred to, the Committee had held that the permission to publish "ordinary simple business cards" where a "matter of local custom", did not permit the publication of such cards in association or society journals or programs, which no "local custom" sanctioned, the Committee saying: "As this sanction is an exception to a well established principle the Committee does not believe it should be extended to other publications or other customs."

In *Opinion 182*, rendered in 1938 after the adoption of the extensive amendment of Canon 27, the Committee was asked whether it was proper, since such amendment, for a lawyer to publish a simple professional card in a local newspaper or in any publication other than an approved law list or legal directory. The Committee, after referring to its decisions prior to the 1937 amendment, when Canon 27 permitted the *"publication* or circulation of ordinary simple business cards" as a matter of *"local* custom", held that in view of the substitution by the 1937 amendment of the words "customary *use"* of simple professional cards for *"publication* and circulation" under "local custom", and in view of the specification of exactly what only could be included in law lists, the rule had been changed and that under the 1937 amendment the "customary use" referred to was only such use as had been recognized by *general* custom as distinguished from *local* custom. Further that there was no general custom sanctioning publication anywhere save in a law list or legal directory.

"The omission," said the Committee, "of any reference to 'publication' or 'local custom' discloses an intent to withdraw the previous sanction of any local custom permitting such an obvious form of advertisement."

It was held that "the Canon does not now permit the insertion of a professional card in any publication other than an approved law list or legal directory".

This opinion was expressly affirmed in *Opinion 260*. See also, *Opinions 203* and *251*.

Although Canon 27 was amended in 1940, 1942 and 1943, and Canon 43 amended in 1942, the above interpretation by the Committee was not disturbed, despite the fact that in its report to the House of Delegates in 1938 the Committee specifically referred to its decision in *Opinion 182*, saying:

> Notwithstanding the action of the Association at its last meeting in amending Canon 27 and limiting the publication of professional cards to approved law lists, the Committee continues constantly to receive inquiries as to the propriety of the publication of cards in newspapers or other publications which are clearly not law lists. The committee has promulgated *Opinion 182* in which it has taken the view that the first sentence of Canon 27, providing that "The customary use of simple professional cards is permissible" does not permit the publication of such cards except in approved law lists as subsequently provided in the same Canon.

The Committee adheres to the above ruling.

16 "Books for Lawyers"

(Continued from page 299)

law—and its purpose the universal guarantee of the Four Freedoms. To give meaning to such a broad guarantee, he posits a limitation of sovereignty, effective democratic processes throughout most of the world, the outlawry of war except in "legitimate self defense", and—most important—the creation of an international "superstate" powerful enough to call to account transgressor states and individuals.

The accomplishment of such a program calls, of course, for a large measure of control by the international organization; and in the second part of his book, Dr. Americano discusses the form which that organization should take. As much of the volume was apparently written prior to the San Francisco Conference, its proposals vary somewhat from those adopted in the United Nations Charter, although a conventional tripartite division of the organization's powers is envisaged. Interesting, though of doubtful practicability, is the suggestion that the international assembly be composed not only of delegates representing states, but also of other delegates chosen so as to give additional voting power to states with large literate populations and to give representation on a proportional basis to opposition groups within a state.

While thoughtful and sincere, the author's views cannot be called either very original or very profound. A great danger in such a work as this is over-simplification of the issues involved. The affairs of nations are not as simple as those of individuals, and it does little service to the law of nations to make them appear so. Analogies with private law—the assimilation, for example, of an aggressor nation to a man flourishing a gun in a crowded room—are sometimes illuminating, but one must take care lest the light be false. Dr. Americano seems to have fallen into this error, notably in his failure to deal adequately with the questions of definition and degrees with which all law is bound up. Thus it is easy to say that aggression should be punished and potential aggression restrained; to rely for their definition, as does

the author, on the "judgment of the international community" in each case is to assume a unity of opinion on controversial issues which has rarely existed among nations. Likewise his prescription for a peaceful world society seems to take too little account of economic and emotional factors; there are, as all lawyers know, limits to effective legal action, whether domestic or international.

In the last part of his book, dealing with the importance of education as the way to establish international peace and morality, the author is eloquent and persuasive. He offers constructive suggestions for such education, and emphasizes the key role of teachers of international law. All can join in his hopes for what education can accomplish toward a better world order.

RICHARD YOUNG
Cambridge, Massachusetts

REBEL AT LARGE. *By George Creel, New York: G. P. Putnam's Sons. 1947. $3.75. Pages 384.*

This is a robustious autobiography. It's what the "spot reporter" telephoned the "rewrite man". George Creel has viewed many facets of the American scene and has reported them all. Apparently he has checked none of his impressions and revised few of his opinions. He quotes as "not entirely untrue" Mark Sullivan's remark that "to Creel there are only two classes of men. There are skunks and the greatest man that ever lived. The greatest man that ever lived is plural, and includes everyone who is on Creel's side in whatever public issue he happens at the moment to be concerned with. In Creel's cosmos there are no shadings and no qualifications. His spectrum contains no mauve, nothing but plain black and plain white." (page 143).

While as every lawyer knows, a knowledge of such bias on the part of a witness enables one better to assess his testimony, it does not necessarily detract from its value and never lessens its interest.

Perhaps Mr. Creel's Southern inheritance destined him to be a d'Artagnan of the press. Both parents were Virginians; his father rode with Jeb Stuart and his mother to the end was an "unreconstructed rebel". Jackson County, Missouri, where they settled after Appomattox, was more Southern in sentiment than even Virginia. Kansas City and especially Independence were dominated by Confederate colonels (no privates seem to have survived) who were the heroes to boyish worshippers.

Mr. Creel's best story concerns a golden-bearded *beau sabreur* of the Confederacy. When General Kirby Smith's troop assembled at Shreveport to surrender, General Jo Shelby and his legion were not there. They had crossed the Rio Grande "rather than live under Yankee rule". Indifferent between the claims of Maximilian and Juarez, General Shelby suggested to his men that the days of Maximilian were numbered and that the main chance pointed to Juarez. For the men Colonel Elliott replied that they all agreed that the doom of the Austrian was sealed and that if General Shelby's honor was pledged in any degree "he might depend upon them to see that his word was not forsworn". But, Colonel Elliott added, according to report, the Empress Carlota was "one of the fairest and noblest of her sex" and that if ever a lady stood in need of supporting swords it was Carlota. "Bowing low, General Shelby rendered his apologies for a forgetfulness that had brought him so close to shame." The next morning, "as nonchalantly as though he were refusing a dinner invitation", he announced that his men had decided to fight for Maximilian. Four years later most of the command drifted back to Missouri. One colonel walked into his home, threw down his hat, and complained to his waiting wife: "Good Lord, Sally. Dinner not ready yet?"[1]

Most of Mr. Creel's newspaper days were spent in Kansas City and Denver. In neither city was there any lack of interest. The Kansas City story is that of the Pendergast machine: "We looked on cunning, resourceful Jim as smartest of the smart, and dismissed Tom, his younger brother, as a thick-skulled, heavy-jowled oaf". (pages 50-51). While the affiliation between the Pendergast organization and President Truman and his father is fully discussed, nothing is suggested that impugns the personal integrity of either of the Trumans.

The Denver days were spent on various newspapers, including the *Post*, which Fred Bonfils and Harry Tammen sank to a new low in American journalism.

Of greatest value is Mr. Creel's account of the Wilson, Harding, Coolidge and Franklin Roosevelt administrations—all of which he saw and a part of which he was. Woodrow Wilson is Mr. Creel's chief hero. Reconstruction and the sabotaging of the League of Nations are to Mr. Creel—and I am inclined to think that he is not far wrong—the darkest blots on our history. While not many new facts are adduced, there is historical value in Mr. Creel's analysis of the reasons for Wilson's break with House and for Wilson's personal attendance at the Paris conference. No additional touches are added to the generally accepted portraits of Harding and Coolidge. Mr. Creel joins the steadily growing chorus of voices that insist that Herbert Hoover has failed to receive the credit due him.[2]

1. Grover Cleveland appointed General Shelby United States Marshal. Eastern newspapers celebrated General Shelby's action in recognizing "the man and brother" by naming a Negro as one of his deputies. While Ol' Bob proudly bore his title "his real job was to wait on Mars' Jo, and see to it that the mint juleps were properly frosted". (page 26).

Another story concerns Cleveland. Senator Vest answered the charge that Cleveland was the father of an illegitimate child: "What of it?" he thundered, "What of it? We did not enter our man in this race as a gelding." (pages 54-55).

2. "Out in San Francisco the Bohemian Club owns several thousand acres up on the Russian River, and every summer sees the entire membership leaving the city for a month or two in the redwoods. Along with the Grove play, the Low Jinks, concerts, etc., a feature of the encampment is the noonday talk at the lakeside by some member or guest. It was in 1945, if I remember correctly, that Mr. Hoover made one of these informal addresses, reporting on his survey of the European situation.

"I nearly rolled off the bank into the water as I listened to him. Head high, gaze direct, he spoke for an hour with a choice of words, a vigor of phrase, and a lucidity that would not have shamed Woodrow Wilson. I have heard

The story of the Franklin Roosevelt administrations in frankly depreciatory. Emphasis is placed upon Roosevelt's addiction to improvisation and to his "royalty complex". As to the first, in last analysis Mr. Creel's view does not differ greatly from that of Frances Perkins.[3] To the second he attributes Roosevelt's breaks with both James A. Farley and John L. Lewis, for whom Mr. Creel seems to have considerable admiration. Roosevelt's Court reorganization plan is discussed at some length. Of major interest is the evolution of the President's thought—the possibility of reasserting the omnipotence of Congress, a constitutional amendment, and finally the discovery of the vulnerable heel of Achilles, the power to enlarge the Court.

Many lawyers are pictured on Mr. Creel's pages: "Jim Reed, my pet detestation"; "medieval McReynolds"; Judge Ben Lindsey, a misunderstood Galahad; Frank P. Walsh, "a great lawyer, a persuasive speaker and the most authentic liberal I have ever known"; John W. Davis, "a man of character and preeminent ability"; Newton D. Baker, "at the end he was praised by General Pershing, General Dawes, and General Harbord as 'the greatest Secretary of War in war that our country has yet produced', but throughout the conflict he was beaten on by a storm of ridicule and abuse." (page 93).

As the result apparently of a self-cross-examination, Mr. Creel does confess that "in the course of forty years" some of his views "have suffered radical alteration". But he hastens to add that his belief is still firm in the recall of judges and of judicial decisions on constitutional questions. Most lawyers will disagree as to the first of these but some may now conclude that the other comes nearer making sense than they once thought.

This autobiography is not history. History is a considered judgment or at least an impartial summing up of all the evidence. This is the avowedly biased testimony of an informed and interested witness. But as such it should not be neglected.

WALTER P. ARMSTRONG

Memphis, Tennessee

him many times since then, both from the platform and over the radio, and there is no public figure today speaking more convincingly, more courageously, or more sanely. Governor Dewey may be the titular head of the Republican party, but Herbert Hoover is its spiritual leader." (page 266).

3. *The Roosevelt I Knew*, by Frances Perkins. The Viking Press, Inc. 1946.

Exhibition of a Moving Picture to Benefit Legal Aid Work

■ A film, "The Paradine Case", which represents a murder trial in the historic London criminal Court, Old Bailey, with meticulous accuracy in the portrayal of the courtroom and English law and procedure, will be presented in a special premiere performance in various cities throughout the country under the sponsorship of the local Bar Association, at a price to be set by the local sponsors, all net proceeds to be paid over to the National Association of Legal Aid Organizations for the promotion of legal aid work in the United States.

The Association of the Bar of the City of New York, of which the head is Harrison Tweed, Chairman of our Association's Committee on Legal Aid work, lead off in sponsoring the showing. Some sixty such performances in as many major cities already have been scheduled to be held during February, March and April. Information regarding them, or regarding the scheduling of additional ones elsewhere, may be secured from the Association of Legal Aid Organizations, No. 25 Exchange Street, Rochester, N. Y., or from Arthur E. Schoepfer, Executive Director, American Bar Association Committee on Legal Aid Work, 16A Ashburton Place, Boston 8, Mass.

We Recommend . . .

MILL ON LIBERTY AND REPRESENTATIVE GOVERNMENT. Edited with Introductions by R. B. McCallum. New York: Macmillan Company; 1947; $2.25; Pages lv, 109. Reviewed on page 294 of this issue).

A MODERN LAW OF NATIONS. By Philip C. Jessup. New York: Macmillan Company; 1948; $4.00; Pages 221. (To be reviewed in our May issue).

I SAW POLAND BETRAYED. By Arthur Bliss Lane. Indianapolis: Bobbs-Merrill Company; 1948; $3.50; Pages 344. (Discussed in our March issue, page 191).

THE NATURAL LAW. By Heinrich A. Rommen. St. Louis: B. Herder Book Company; 1947; $4.00; Pages xi, 290. (Reviewed in 33 A.B.A.J. 922; September, 1947).

SOME REFLECTIONS ON THE READING OF STATUTES. By Felix Frankfurter. New York: Association of the Bar of the City of New York; 1948; $1.50. (See page 221 of our March issue).

CONFESSIONS OF AN UNCOMMON ATTORNEY. By Reginald L. Hine. New York: Macmillan Company; 1947; $4.00; Pages xix, 268. (Editorial in 34 A.B.A.J. 127; February, 1948; review at page 141, same issue).

THE LIFE OF ROSCOE POUND. By Paul Sayre. Iowa City, Iowa: Law School Committee; 1948; $4.50; Pages 412. (Editorial comment on page 219 of our March issue; to be reviewed in our May issue).

HERITAGE OF FREEDOM. By Frank Monaghan. Princeton, New Jersey: Princeton University Press; 1947; $3.50; Pages 150. (Noted in 34 A.B.A.J. 145; February, 1948).

ETERNAL LAWYER: A LEGAL BIOGRAPHY OF CICERO. By Robert N. Wilkin. New York: Macmillan Company; 1947; $3.00; Pages xvi, 264. (Reviewed in 33 A.B.A.J. 592; June, 1947; editorial at page 582, same issue).

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Proceedings of the House of Delegates:

February 23-24, 1948

■ This is our usual chronological summary, session by session, of the proceedings of the House of Delegates at its mid-winter meeting in Chicago, this one on February 23-24. The actions voted were of such significance that a number of them have been reported separately and more fully in this issue. The following narrates numerous other matters which should be read by all members, because the reports made and the decisions voted are important for the public and the profession.

FIRST SESSION

■ The House of Delegates convened on the morning of February 23 for the first session of its 1948 mid-year meeting, in the ballroom of the Edgewater Beach Hotel, Chicago, with President Tappan Gregory, of Illinois, in the chair. Roll-call by Secretary Joseph D. Stecher, of Ohio, showed 168 members of the House present, with every State and the Territory of Alaska represented. President Gregory recognized Glenn M. Coulter, of Michigan, Chairman of the Committee on Credentials and Admissions, who reported that the Committee had approved the roster of members of the House of Delegates as used on the roll-call. He noted the death since the 1947 Annual Meeting of Chief Justice James P. Alexander, delegate of the State Bar of Texas (34 A.B.A.J. 241; March, 1948) and Harry Cole Bates, of New York, delegate of the Association of Life Insurance Counsel (34 A.B.A.J. 249; March, 1948). Chairman Coulter announced that his Committee had approved a certificate of compliance from the Kansas City Bar Association, a local voluntary Bar Association formed in 1884, and that that Association was represented in the House.

After approval of the record of the last Annual Meeting, a summary of which had been sent to all members of the House, President Gregory relinquished the gavel to the Chairman of the House, Howard L. Barkdull, of Ohio.

Chairman Barkdull then gave opportunity for resolutions from the floor, for reference to the Committee on Draft. Robert G. Simmons, Chief Justice of the Supreme Court of Nebraska, presented on behalf of the Section of Judicial Administration a resolution to the effect that the Association approve in principle a conference of the Chief Judges or Justices of the highest Courts of States and authorize the Section to plan the organization of such conferences. For the Section of International and Comparative Law, Chairman Frederic M. Miller, of Iowa, submitted two resolutions: One to approve the Marshall Plan and another as to the next meeting of the International Bar Association.

Secretary Stecher gave the report of actions taken by the Board of Governors since the September meeting of the House. He stated that the Board had held three meetings: One in Cleveland immediately on adjournment of the 1947 Annual Meeting, one in Chicago on last November 6 and 7, and one in Chicago immediately before the present meeting of the House. He reported that the following actions had been taken by the Board:

(1) Re-election of Mrs. Olive G. Ricker as Executive Secretary of the Association.

(2) Re-appointment of the Board of Elections, consisting of Judge Edward T. Fairchild, Chairman, of Wisconsin; William P. MacCracken, Jr., of the District of Columbia; and Harold L. Reeve, of Illinois.

(3) Approval, on the recommendation of President Gregory, of re-organization of certain of the Board's sub-committees, to make the Committee on Administration consist of the Chairman of the House of Delegates as Chairman, the Secretary, and the Treasurer; and to combine the former Sub-committee on Association Committees with the Sub-committee on Sections.

(4) No appointment of a Sub-committee on Regional Meetings, but committal of the holding of Regional Meetings to the Administration Committee. Subsequently the Board approved a recommendation

that no Regional Meetings be held in the Association year 1947-48, but that the member of the Board of Governors for each circuit be available for meetings of State Bar Associations in his circuit.

Administrative Regulations as to Sections Are Reported

(5) Holding the annual conference of Section Chairmen, on last November 7, at which the necessity for coordinating the actions of Sections was stressed; and to implement this purpose announcing administrative regulations as follows:

(a) No Section will conduct a campaign for membership except with the approval and under the supervision of the Administration Committee.

(b) No Section will issue "dunning" notices for Section dues except with the approval of the Administration Committee—this in view of the methods in force at Headquarters in following up the non-payment of dues.

(c) No Section may accept a contribution from outside the Association, whether of money or free printing or any other contribution, without the prior approval of the Administration Committee.

(d) No Section or Section publication will solicit advertising for itself in view of the fact that the JOURNAL is the official publication of the Association; if any Section secures advertising for the JOURNAL, a commission on the proceeds will be credited to the Section.

(e) Each Section shall make its own arrangements for any stenographic reports of its proceedings in Seattle in connection with the 1948 Annual Meeting.

(6) Authorizing President Gregory to appoint ten representatives of the Association to attend the next meeting of the International Bar Association, with the proviso that the Association should not bear the expense of such representation.

(7) Election of James E. Brenner, of California; Richard Bentley, of Illinois; and Judge Robert N. Wilkin, of Ohio, to the Board of Editors of the JOURNAL.

(8) Authorizing the participation of the Association in legal aspects in the National Conference on Family Life, on the basis noted in 34 A.B.A.J. 43; January, 1948; President Gregory subsequently appointing the representation reported in 34 A.B.A.J. 195; March, 1948.

(9) Directing that only the persons elected to membership in the Association since the publication of the 1946 Annual Report be listed in the 1947 Report—this in order to effect necessary economies.

Meeting Places and Approximate Dates for 1949 and 1950 Are Announced

(10) Changing the date of the opening of the 1948 Annual Meeting from September 7 to September 6.

(11) Acceptance of the invitation of the St. Louis Bar Association to hold the 1949 Annual Meeting in St. Louis, and the invitation of the Bar Association of the District of Columbia to hold the 1950 Annual Meeting in Washington, D. C., during the celebration of the 150th Anniversary of the creation of the District of Columbia.

(12) Authorizing the special Committee on Restoration of the Inns of Court and the Committee on Aid to Lawyers in War-Devastated Countries to proceed with their solicitations of funds from lawyers (33 A.B.A.J. 1189 and 1241; December, 1947).

(13) Disapproval of the recommendations of the Committee on Rights of the Mentally Ill, which were not presented at the Cleveland meeting because no member of the Committee was present to offer the report and recommendations; decision to continue the Committee.

Special Committees Are Authorized and Reported

(14) Authorizing the following Special Committees:

(a) A Committee on American Federal System of Government, to study, among other things, the McCarran bill (S. 1156; see 33 A.B.A.J. 525; June, 1947).

(b) A Committee on Legal Aspects of National Security.

(c) A Committee to consider and report as to the resolution proposed in the Assembly on the *Tidelands* case (332 U. S. 19).

(15) Receiving a progress report of the National Committee on Traffic Safety, and authorizing the Committee to continue its program.

(16) Stating by resolution that lawyers and their lawyer-sons who own and publish law lists which were published before the adoption of the original Canons in 1908 may continue to publish their names in such lists if they include also from the city or community other listees in a number which the Special Committee on Law Lists considers normal for such city or community.

(17) Approval of a resolution, upon the report of a special sub-Committee, favoring universal military training for young men and women.

(18) Recommendation to the House of Delegates that action be taken to establish a retirement pension fund for employees of the Association; recommendation also that monies for the purpose be made available in 1948-49 by utilizing any needed part of the proceeds from sustaining memberships, thus far placed in the building fund to the extent that they exceed $12 per maintaining member.

Secretary Stecher moved the adoption of this report of actions taken by the Board of Governors since the last meeting of the House. Several members stated their view that since several controversial measures were included in the report, the House should consider and vote separately on them. A motion to this effect by John Kirkland Clark, of New York, was carried. Chairman Barkdull referred the report to the Committee on Rules and Calendar for recommendation as to the time when the Board's actions would be considered in the House.

Reports of the Treasurer and Budget Committee Show Need for Economy

Walter M. Bastian of the District of Columbia, Treasurer of the Associa-

tion gave his report. The budget for the current fiscal year contemplates an estimated income of $468,400 and total appropriations of $468,309.62, leaving an unappropriated balance of $90.37. Of the estimated income, $434,457.24 was collected during the first seven months of the fiscal year, leaving a balance of $33,942.76 to be collected. Treasurer Bastian expressed his opinion to be that this goal will probably be reached.

Deane C. Davis, of Vermont, Chairman of the Budget Committee, presented its report. He said that the increase in Association dues resulted in numerous requests for increased appropriations from Sections and Committees, and that many of these had to be curtailed or denied in order that the Association start making up the deficit of $87,240.68 incurred for the fiscal year 1946-47, when costs had gone up but dues were in process of being increased. He said further that the budget for the current year has been constructed and operated "upon the assumption that definite deficit spending is not in keeping with the tradition of this Association and should not be permitted . . ."

The House proceeded next to the nominations for the new Committee on Scope and Correlation of Work, with results reported elsewhere in this issue.

Chairman Charles M. Lyman, for the Committee on Rules and Calendar, recommended that the actions of the Board of Governors represented by items (8), (16), (17) and (18), above, along with the Board's report of the resolution as to military justice, be made a special order of business for the beginning of the afternoon session. This was ordered.

Jennings Bill (H.R. 1639) Approved With Amendments

The House debated and adopted by a strong vote the resolutions drafted by a special Committee regarding the Tidelands Case (332 U. S. 19), in support of S. 1988, to recognize and confirm State titles to tidelands. This action is reported elsewhere in this issue.

Charles S. Rhyne, of the District of Columbia, Chairman of the Committee of Aeronautical Law, announced that the report of his Committee had been filed, with no recommendations for action.

The Committee on Public Relations reported interestingly by Chairman George M. Morris, of the District of Columbia. For the new Committee on Legal Aspects of National Security, Chairman Edmund Ruffin Beckwith, of New York, told the House of the preparatory work.

Former Judge Frederic M. Miller, of Iowa, for the Committee on Professional Ethics and Grievances, made its report, in the absence of its Chairman, Henry S. Drinker, of Pennsylvania. Arthur J. Freund, of Missouri, submitted a report for the Section of Criminal Law, of which he is Chairman.

Two recommendations were offered by Chairman Frederick W. Brune, of Maryland, for the Committee on Jurisprudence and Law Reform. The first, approved by the Board of Governors, was passed in a textually modified form, with several words being stricken from the original resolution and certain words added, on the motion of Former Judge Floyd E. Thompson, of Illinois, the changes being made to conform to House practice. The resolution as passed, with the deletion shown in brackets and the added part in italics, follows:

> RESOLVED, That the House of Delegates of the American Bar Association reaffirms its approval in principle of the so-called Jennings Bill (H.R. 1639, in the 80th Congress), and endorses, as consonant with that approval, amendments [described in the report of the Committee on Jurisprudence and Law Reform this day submitted to the House, such amendments] (1) broadening the basis of venue authorized in any case from the county to the State in which the injured person resided or in which the injury occurred; and (2) permitting the application of the doctrine of forum non conveniens to [suits brought elsewhere] *actions* for personal injury or wrongful death; and that *the President of the United States, and* the Committees on the Judiciary of the Senate and the House of Representatives be advised of this resolution; *and that the Committee on Jurisprudence and Law Reform, or representatives designated by that Committee, be authorized to appear in support of this legislation.*

The second recommendation of the Committee was adopted, in an amended form advised by the Board of Governors, as follows, the changes being only as to the Committees to which the referral was made:

> RESOLVED, That the House of Delegates requests the President to refer to the Committee on Commerce and the Committee on Employment and Social Security, for consideration and report to this House, the question whether or not the Federal Employers' Liability Act should be replaced by a Workmen's Compensation Act; and, if so, to draft such act or to propose the form which it should take.

The first session then recessed until 2 o'clock.

SECOND SESSION

■ Upon reconvening the House took up as a special order of business the several resolutions adopted by the Board of Governors, which had been severed from its general report at the first session.

The first, offered by Secretary Stecher, and approved unanimously by the House, authorized the participation of the Association as a sponsoring organization of the National Conference on Family Life (34 A.B.A.J. 43; January, 1948), such participation to be limited to work in the Legal Section of the Conference and to involve no expense to the Association.

After some discussion, the second resolution as basis for ending a long-time controversy was approved by a divided vote. There was some opposition to a "grandfather clause" as to law lists, but the House sustained the following, understood to be acceptable to the Committee:

> WHEREAS, Canon 27 now provides that lawyers may publish certain biographical and other information regarding themselves and their associates in reputable law lists; and
>
> WHEREAS, The Special Committee on Law Lists requested an opinion from the Committee on Professional Ethics and Grievances relating to publishers of law lists who are lawyers, and who published their own names as sole listees in their home city or

community, and the Professional Ethics and Grievances Committee rendered its *Opinion 255* stating that Canon 27 as it now reads condemns such practice; and

WHEREAS, The Professional Ethics and Grievances Committee has reconsidered *Opinion 255* after additional hearings of all interested parties and has affirmed the basic principles and conclusions announced therein; and

WHEREAS, Prior to the adoption of the original Canons in 1908, certain lawyer owners, publishers or proprietors of law lists so published their names as sole listees and they and their lawyer sons so continued for many years without criticism;

NOW BE IT RESOLVED, That it is the judgment of this Board that in view of such long-recognized practice, if such lawyer publishers, proprietors or owners include in such city or community other listees in a number which the Special Committee on Law Lists considers normal for such lists in those respective cities or communities, they may continue to publish their names in such law lists and no objection should be made thereto by this Association or its Committee on Professional Ethics and Grievances or Special Committee on Law Lists.

The House's emphatic adoption of the third resolution from the Board, in favor of universal military training, is reported elsewhere in this issue.

The fourth resolution proposed a modification of House action voted at the 1947 mid-year meeting as to segregation of the amount of Association income received from sustaining memberships in excess of the amount of regular dues otherwise payable by such members. For the present year 1947-48 the proceeds of this excess have been put in the building fund. To avoid "deficit financing" in view of the budgetary situation reported above, the Board recommended that effective on and after July 1, 1948, the requirements of the pension and retirement system which the Board of Governors has established for employees who have long served the Association be a first charge against the proceeds of sustaining memberships. Debate ensued; on a motion by J. Harry LaBrum, of Pennsylvania, the House referred the matter to the Ways and Means Committee, for study and report at the 1948 Annual Meeting.

William H. King, Jr., of Illinois, Chairman of the Committee on Military Justice, presented the fifth resolution from the Board of Governors, asking for amendment of the Elston bill (H.R. 2575) so as to eliminate commanding-officer appointment of courts martial and review of courts-martial proceedings. The favorable action is reported elsewhere in this issue.

Proposals by Judiciary Committee Are Debated and Adopted

The House took up the report of the Committee on the Judiciary. Chairman John G. Buchanan, of Pennsylvania, told the House that his Committee heartily favored confirmation of the appointments of Justice Harold M. Stephens as Chief Judge and Judge Joseph M. Proctor as Associate Justice of the Court of Appeals of the District of Columbia, but is unanimously opposing, on grounds stated, the confirmation of Edward A. Tamm, of the FBI, to the vacancy in the District Court of the District of Columbia (see, 34 A.B.A.J. 177; March, 1948). His announcement was received with applause.

The first resolution from the Committee on the Judiciary favored passage of the O'Hara bill (H. R. 129) relating to the performance by federal judges of services not related to their judicial duties. The measure would make it "unlawful for any judge appointed under the authority of the United States, except when specifically authorized by law, to accept, hold, or discharge the duties of any other office or employment under or for the United States while holding office as such judge". The Committee proposal recommended, however, that the bill be amended making the requirement for prior legislative approval apply also to office or employment under "any State, or any government, national, State or otherwise". Judge John J. Parker, of North Carolina, Senior Circuit Judge of the United States Court of Appeals for the Fourth Circuit, spoke in earnest opposition to the resolution, but it was adopted.

Constitutional Amendments as to Supreme Court Are Favored

Resolutions 2, 3 and 4 dealt with constitutional amendments favorably considered by the Association of the Bar of the City of New York (see, 34 A.B.A.J. 1; January, 1948). Continuance of lively debate as to the proposals was evoked. Resolution No. 2 read:

RESOLVED, That it is the sense of the American Bar Association that the Congress should propose and the legislatures of the States should ratify an amendment to the Constitution of the United States of America as follows:

"Section 1. The Supreme Court shall be composed of the Chief Justice of the United States and eight Associate Justices.

"Section 2. The Chief Justice of the United States and each Associate Justice of the Supreme Court shall retire at the end of the term of the Court during which he shall attain the age of seventy-five years."

Former Governor John M. Slaton, of Georgia, moved that the House consider the proposed Section 1 of the amendment separately from Section 2. This was decided on. A. W. Trice, of Oklahoma, moved that the following sentence be added to Section 1: "No person shall be eligible to appointment to the Supreme Court unless he shall have been admitted to the practice of law in some one of the States at least fifteen years next before his appointment, and shall have been a citizen and resident of the United States for a like time next before his appointment". This amendment was defeated.

Some members of the House opposed the resolution on the ground that the number of Supreme Court justices should not be set by constitutional amendment, in view of the possibility that more justices may be desirable in the future with an increase of jurisdiction and litigation. Governor Slaton spoke eloquently in opposition to Section 2 of the amendment, on the ground that age and experience should not compel retirement of judges. Resolution No. 2 of the Committee was adopted by the House.

The third resolution was:

RESOLVED, That the Board of Gov-

ernors be directed to refer to an appropriate committee the recommendation of the Association of the Bar of the City of New York that Article III, Section 2, of the Constitution of the United States be amended so as to provide that in all cases arising under the Constitution the Supreme Court shall have appellate jurisdiction both as to law and fact.

Upon the recommendation of the Board of Governors, this was referred to the Committee on Jurisprudence and Law Reform.

After further enlightening debate the House adopted with substantial unanimity the Committee's Resolution No. 4:

> RESOLVED, That it is the sense of the American Bar Association that by constitutional amendment or legislation it should be provided that no person hereafter appointed Chief Justice or Associate Justice of the Supreme Court shall be eligible to the office of President or Vice President.

Consideration of the Committee's fifth resolution was held over until the third session. The House recessed at 5:45 o'clock.

THIRD SESSION

▪ The third session was convened at 10:30 o'clock Tuesday morning, after the meeting of the State Delegates. Secretary Stecher announced the nominations made for officers of the Association and four members of the Board of Governors. These are reported on another page.

William G. McLaren, of Washington State, and Tracy E. Griffin, Chairman of the State's American Bar Association Convention Committee, told briefly of plans for the Annual Meeting in Seattle, September 6-9.

Resuming consideration of recommendations by the Committee on the Judiciary, Chairman Buchanan offered its fifth resolution, which was adopted, as follows:

> RESOLVED, That the American Bar Association is in favor of the repeal of the prohibition against the filling of the vacancy resulting from the retirement of the late Judge Woolsey as District Judge of the United States for the Southern District of New York and is in favor of the creation of two additional judgeships in said district.

The Board of Governors had suggested that it was undesirable for the House to establish a precedent of recommending the creation or non-creation of particular judgeships in particular districts of the United States—a function performed by the Judicial Conference of Senior Circuit Judges. In view of the importance and urgency of the New York City situation, the House voted support for the action of the Association of the Bar of the City of New York.

Dean Joseph A. McClain, Jr., of Missouri, reporting for the Section of Legal Education and Admissions to the Bar, recommended Association approval for three law schools: Rutgers University School of Law, Newark, New Jersey; University of New Mexico College of Law, Albuquerque, New Mexico; and Saint Mary's University School of Law, San Antonio, Texas. This was carried.

The House approved a request of the Junior Bar Conference, submitted by Chairman T. Julian Skinner, Jr., of Alabama, that he be authorized to appoint State co-chairmen where he deems it necessary.

Resolutions from the Committee on the Bill of Rights, condemning Communistic infiltrations in the United States and urging registration of "Communists and Communist organizations", were presented by Robert R. Milam, of Florida, and adopted by the House after debate, as reported elsewhere in this issue.

Harrison Tweed, of New York, President of the American Law Institute, gave a "progress report" on the joint program for continuing legal education.

Resolutions from Section of Corporation, Banking and Mercantile Law Are Approved

Three resolutions presented by Chairman Benjamin Wham, of Illinois, for the Section of Corporation, Banking and Mercantile Law, were adopted:

1. That the action of the members and Council of the Section of Corporation, Banking and Mercantile Law in raising the Section's annual dues from $2.00 to $3.00 commencing July 1, 1948, is hereby approved.

2. That the American Bar Association approves the recommendation of the Section of Corporation, Banking and Mercantile Law that the State Department propose to the International Conference on Trade and Employment that creditors from this country be given equal treatment with creditors of all countries who are members of the Conference in all matters of liquidation, bankruptcy and reorganization.

3. That the American Bar Association approves in substance H. R. 5074 for the amendment of the Bankruptcy Act.

A fourth resolution, directing the Sections of Corporation, Banking and Mercantile Law and of Taxation to recommend "as soon as practicable" definite proposals for ending or lessening the federal income tax inequities now faced by partners and sole proprietors of unincorporated businesses, in the matter of pension and retirement plans, was also adopted (see editorial, "Doing Something for Lawyers", in this issue).

Re-examination of Social Security Program Is Urged

Urging a complete re-examination of the social security and unemployment compensation programs, the Committee on Employment and Social Security, through its Chairman, William Logan Martin, of Alabama, presented three resolutions which were adopted unanimously by the House:

1. That the Congress create a special committee to study the effect and results of the Social Security Act of Congress, and the desirability of revising the social security and unemployment compensation programs; and also give particular attention to the wisdom or fairness of deriving revenue from a class of citizens which is not paid by all.

2. That in view of the fact that 86.26 per cent of the accumulated social security and unemployment funds have been expended for public purposes and non-negotiable special government obligations substituted therefor, and that such part of such sum as may be necessary to meet extraordinary demands which may arise in the future will of necessity have to be raised by the sale of negotiable bonds or by the imposition of taxes to redeem the non-negotiable obligations, Congress give consideration to a plan by which such funds as are disbursed for old age and unemployment compensation will be collected currently and in a sum not in excess of antici-

pated needs, and to terminating the present plan and substituting therefor a pay-as-you-go plan.

3. That a copy of this Resolution and Report be sent to each Senator and member of the House of Representatives.

A "progress report" on Uniform State Laws was given by William W. Evans, of New Jersey, Chairman of the Committee on State Legislation.

Resolutions from Section of Patent Law Are Approved

Taking up consideration of the report of the Section of Patent, Trade-Mark and Copyright Law, presented by the Section Chairman, Fulton B. Flick, of Pennsylvania, the House first approved amendments of the Section's By-Laws to bring them into line with present standard form.

The Section's second resolution was debated, and then adopted in an amended form as follows:

RESOLVED, That the Association recommends that Revised Statute 4893, 35 USC § 36, be amended by adding at the end thereof the following:

Every such patent shall be presumed to be valid unless and until it has been held invalid by the final judgment of a Court of competent jurisdiction from which no appeal is or can be taken.

The third and fourth resolutions from the Section were adopted without change as follows:

RESOLVED, That the Association disapproves H. R. 2520 and disapproves in principle any change increasing present fees of the United States Patent Office incident to the filing and securing of U. S. Letters Patent.

RESOLVED, That the Association disapproves H. R. 3700 and further disapproves in principle any requirement of payment of any fees or taxes for the maintenance of a patent right.

As to the fifth resolution relating to the patent provisions of any future National Science Foundation bills, consideration was, on the motion of David F. Maxwell, of Pennsylvania, deferred until the Annual Meeting.

The third session of the House recessed at 12:45 o'clock.

FOURTH SESSION

■ The final session of the mid-year meeting reconvened at 2:05 o'clock. As a special order of business it took up first a resolution as to federal aid to housing, which was unanimously adopted, as reported elsewhere in this issue.

After a statement for the Council of the Section of International and Comparative Law by its Chairman, Judge Frederic M. Miller, of Iowa, the report of the Committee on Peace and Law Through United Nations was presented by its Chairman, William L. Ransom, of New York. The actions voted are detailed elsewhere in this issue.

Former President Joseph W. Henderson, of Pennsylvania, gave the report of the Section of Administrative Law. He announced that the Section has inaugurated an essay contest in which a prize of $1000 will be given to the member of the Association submitting the best essay on the subject of State administrative law. Details of the contest are given elsewhere in this issue. He stated also that a Hearing Examiners Board had been set up in the United States Civil Service Commission (see, 34 A.B.A.J. 179; March, 1948).

A stirring report of the work of the Committee to Aid Lawyers in War-Devastated Countries was given by its Chairman, Former President Jacob M. Lashly, of Missouri.

Secretary Stecher announced the results of balloting for the newly-formed Committee on Scope and Correlation of Work, as reported elsewhere in this issue.

In reporting for the Committee on Unauthorized Practice of the Law, Chairman John D. Randall, of Iowa, told the House that hearings have been completed on the Administrative Practitioners Act (the Gwynne bill, H. R. 2657) sponsored by the Association, and that the active support of every member will be required for its passage. He reported also that his Committee is opposing an amendment to a bill to codify the Judicial Code of the United States (H. R. 3214) which provides that no "qualified person" be denied the right to practice before the Tax Court of the United States "because of his failure to be a member of any profession or calling". The Committee offered the following resolution which was adopted:

RESOLVED, That the American Bar Association approves in principle the Statement of Principles of Cooperation between the Life Underwriters and Lawyers, adopted at Washington, D. C., February 8, 1948, by the National Conference of Lawyers and Life Underwriters, submitted in connection with this report; and that the committee be authorized to give this statement the widest possible publicity.

J. Harry LaBrum, of Pennsylvania, gave the report of the Section of Insurance Law, in the absence of the Section Chairman, Thomas Watters, Jr., of New York.

The following resolution presented by John M. Niehaus, of Illinois, Chairman of the Section of Labor Relations Law, on behalf of the Section, was adopted:

RESOLVED, That the Section of Labor Relations Law of the American Bar Association be and is hereby authorized to participate in a permanent body, to be known as "The Information Council of Labor Arbitration", which Council shall serve as a clearing house of information on activities in the field of labor arbitration that may be of common interest to the participating organizations; said Council shall consist of representatives of the American Arbitration Association, Industrial Relations Research Association, National Academy of Arbitrators, and the Section of Labor Relations Law of the American Bar Association; and

BE IT FURTHER RESOLVED, That the Section of Labor Relations Law be and is hereby authorized to appoint a representative or representatives to the said Council, but said representative or representatives shall be without power to commit the Section of Labor Relations Law or the American Bar Association to any of the policies or activities of the Council or of the several organizations participating in such Council.

Resolutions from the Committee on Draft Are Adopted

Osmer C. Fitts, of Vermont, Chairman of the Committee on Draft, reported the following resolutions offered from the floor:

(1) *From the Section of Judicial Administration:* Approving in principle an annual Conference of Chief Justices of the highest Courts of each State, and authorizing the Section to plan the organization of such a Conference.

(2) *From the Section of International and Comparative Law:* Noting with interest the announcement of the Second Conference of the International Bar Association at The Hague, Netherlands, on August 15-22.

(3) *From the Section of International and Comparative Law:* Endorsing in principle, but in a modified form, the European Recovery Program. (Text of the amended resolution, etc., is given elsewhere in this issue).

Chairman Fitts reported that a resolution as to war crimes and other related matters had been submitted by James A. Gleason, of Ohio, not a member of the House. His motion that the material contained in the resolution be submitted to the Committee on Military Justice and the Section of International and Comparative Law was carried.

W. Leslie Miller, of Michigan, announced that the Committee on Hearings, had no report to make. Charles M. Lyman, of Connecticut, Chairman of the House Committee on Rules and Calendar, gave a report for that group.

The business of the calendar having been completed, the House adjourned *sine die* at 4:30 o'clock on February 24.

Nominating Petitions 27

Arizona

The undersigned hereby nominate Charles H. Woods, of Tucson, to fill the vacancy in the office of State Delegate for and from the State of Arizona for the term ending with the adjournment of the 1948 Annual Meeting, and for the office of State Delegate for and from the State of Arizona for the three year term beginning with the adjournment of the 1948 annual meeting:

Richard Fennemore, Virgil T. Bledsoe, J. Early Craig, R. C. Stanford, Jr., John F. Sullivan, Charles N. Walters, Walter E. Craig, Henry W. Allen, Harold J. Janson, W. Francis Wilson, Leonard S. Sharman, Floyd M. Stahl, John A. Murphy, Denison Kitchel and William Spaid, of Phoenix;

Clifford R. McFall, of Tucson. (The sixteen preceding signatures appeared on both the petition for the vacancy and for the regular term):

Palmer C. Byrne, Donald J. Morgan and A. M. Crawford, of Prescott;

Herbert F. Krucker, Richard H. Chambers, Fred W. Fickett and George R. Darnell, of Tucson;

Joseph S. Jenckes, Jr., Howard A. Twitty, Vernon B. Croaff, Thomas J. Croaff, Jr., Charles Bernstein, Paul M. Roca, William A. Evans, Everett M. Ross, Henry S. Stevens, Alfred C. Lockwood, and Wallace W. Clark, of Phoenix.

Illinois

The undersigned hereby nominate Floyd E. Thompson, of Chicago, for the office of State Delegate for and from the State of Illinois to be elected in 1948 for a three-year term beginning at the adjournment of the 1948 annual meeting:

Barnabas F. Sears, of Aurora;
Kaywin Kennedy, of Bloomington;
C. E. Feirich, of Carbondale;
Charles Wham, of Centralia;
Jonathan C. Gibson, T. I. McKnight, Harold A. Smith, Elmer M. Leesman, Anna Svatik, Charles LeRoy Brown, James F. Spoerri, Charles J. Calderini and Frederick Dickinson, of Chicago;
Henry C. Warner, of Dixon;
Bruce A. Campbell, of East St. Louis;
Harry H. Porter, of Evanston;
Rodney L. Stuart, of Galesburg;
Walter Bellatti, of Jacksonville;
Melville A. Gray, of Joliet;
Albert M. Crampton, of Moline;
Clarence W. Heyl, of Peoria;
George H. Wilson, of Quincy;
Charles D. Marshall, of Rock Island;
Karl C. Williams, of Rockford;
Albert J. Harno, of Urbana.

Iowa

The undersigned hereby nominate John D. Randall, of Cedar Rapids, for the office of State Delegate for and from the State of Iowa to be elected in 1948 for a three-year term beginning at the adjournment of the 1948 annual meeting:

Charles E. Hughes, of Belle Plaine;

Carl C. Riepe and John Hale, of Burlington;

T. M. Ingersoll, V. C. Shuttleworth, David G. Bleakley, A. H. Sargent, Richard F. Nazette, Elmer A. Johnson and James E. Franken, of Cedar Rapids;

Wayne G. Cook, Edward A. Doerr, James W. Bollinger and Charles D. Waterman, of Davenport;

Frederic M. Miller, Edward H. Jones, John S. Howland, C. C. Putnam, Sr., Fred C. Huebner and Phineas M. Henry, of Des Moines;

D. G. McCarthy, of Emmetsburg;

Roscoe P. Thoma, of Fairfield;

B. B. Burnquist and D. M. Kelleher, of Fort Dodge;

Franklin Jaqua, of Humboldt.

Maine

The undersigned hereby nominate Clement F. Robinson, of Portland, for the office of State Delegate for and from the State of Maine to be elected in 1948 for a three-year term beginning at the adjournment of the 1948 annual meeting:

Frank D. Fenderson, of Alfred;

Herbert E. Locke, Ernest L. McLean and Ralph Farris, of Augusta;

Edward W. Bridgham, of Bath;

Carleton Doak, of Belfast;

James Blenn Perkins, Jr., of Boothbay Harbor;

Harold H. Murchie, of Calais;

Owen Brewster, of Dexter;

Harold M. Hayes, of Dover-Foxcroft;

Philip Lovell, of Ellsworth;

Benjamin Butler, of Farmington;

George B. Barnes, of Houlton;

William B. Skelton and John J. Mahon, of Lewiston;

Albert J. Stearns, of Norway;

Leon V. Walker, Robinson Verrill, Harry M. Verrill, Sidney St. F. Thaxter, and John F. Dana, of Portland;

Edward S. Titcomb, of Sanford;

Edward F. Merrill, of Skowhegan;

James L. Boyle and Carroll N. Perkins, of Waterville.

Montana

The undersigned hereby nominate Julius J. Wuerthner, of Great Falls, for the office of State Delegate for and from the State of Montana to be elected in 1948 for a three-year term beginning at the adjournment of the 1948 annual meeting:

W. J. Jameson, F. D. Moulton, Melvin N. Hoiness, Cale J. Crowley, James H. Kilbourne, James M. Haughey, R. G. Wiggenhorn and A. F. Lamey, of Billings;

James Thomas Finlen, Jr., Roy H. Glover, John V. Dwyer, Robert G. Dwyer, L. V. Ketter, W. M. Kirkpatrick, P. L. MacDonald, Sam Stephenson, Jr. and John E. Corette, of Butte;

Arthur S. Jardine, S. B. Chase, Jr., Alexander Blewett, Jr., John H. Weaver, Harvey Blaine Hoffman, Orin R. Cure, John D. Stephenson, William M. Scott and I. W. Church, of Great Falls.

New Jersey

The undersigned hereby nominate William W. Evans, of Paterson, for the office of State Delegate for and from the State of New Jersey to be elected in 1948 for a three-year term beginning at the adjournment of the 1948 annual meeting:

Russell E. Watson, of New Brunswick;

John Grimshaw, Jr., Louis Dworetz, Foster W. Freeman, Jr., Foster W. Freeman, Sr., Archibald Kreiger, Charles S. Silberman, Edgar A. DeYoe, Milton Schamach, Edward F. Merrey, Sr., and Paul Rittenberg, of Patterson;

N. Louis Paladeau, Jr., Theodore C. Baer, William R. Gannon and Charles Hershenstein, of Jersey City;

Sylvester C. Smith, Jr., H. Edward Toner, John A. Ackerman, G. Dixon Speakman and Thomas McKay, Jr., of Newark;

S. Paul Ridgway, of Atlantic City;

Frank T. Lloyd, Jr., Joseph J. Summerill, Jr., John H. Reiners and Walter R. Carroll, of Camden.

Texas

The undersigned hereby nominate James L. Shepherd, Jr., of Houston, for the office of State Delegate for and from the State of Texas to be elected in 1948 for a three-year term beginning at the adjournment of the 1948 annual meeting:

Ben H. Powell, Arthur P. Bagby, Dan Moody, Ireland Graves and Edward Clark, of Austin;

J. A. Elkins, Warren J. Dale, W. B. Bates, Newton Gresham, Hugh Q. Buck, John C. Williams, Leon Jaworski and H. F. Montgomery, of Houston;

R. G. Storey, J. Glenn Turner, Paul Carrington, Hatton W. Sumners, Gerald C. Mann, W. B. Hamilton, Walace Hawkins, E. Taylor Armstrong, H. Bascom Thomas, Jr., Paine L. Bush, John E. Kilgore, and Ralph B. Shank, of Dallas.

Texas

The undersigned hereby nominate E. G. Lloyd, Jr., of Alice, for the office of State Delegate for and from the State of Texas, to be elected in 1948 for a three-year term beginning at the adjournment of the 1948 annual meeting:

Frank B. Lloyd, Jacob S. Floyd and C. W. Perkins of Alice;

C. C. Small, of Austin;

J. Allen Wood, O. E. Cannon, I. M. Singer and W. M. Lewright, of Corpus Christi;

Ed Mann, S. T. Phelps, M. J. Raymond, J. G. Hornberger and Horace Hall, of Laredo;

R. E. Seagler, Nelson Jones, Rex G. Baker, J. Q. Weatherly and James V. Allred, of Houston;

Paul G. Greenwood and M. O. Johnson, of Harlingen;

Robert Lee Bobbitt, Park Street, Al M. Heck, W. W. Fowlkes and Raymond W. Weber, of San Antonio.

Wyoming

The undersigned hereby nominate Charles E. Lane, of Cheyenne, for the office of State Delegate for and from the State of Wyoming to be elected in 1948 for a three year term beginning with the adjournment of the 1948 annual meeting:

Burt Griggs and Robert B. Rose, of Buffalo;

T. Blake Kennedy, Albert D. Walton, Ewing T. Kerr, George E. Brimmer, William O. Wilson, George F. Guy and Marshall S. Reynolds, of Cheyenne;

Clarence W. Cook and Louis Kabell, Jr., of Evanston;

Roscoe R. Gardner, of Glenrock;

Joseph O. Spangler, of Greybull;

L. A. Bowman, of Lovell;

Elwood Anderson, of Gillette;

Thomas O. Miller and Frank A. Barrett, of Lusk;

Preston T. McAvoy, of Newcastle;

Edwin V. Magana, of Rock Springs;

Madge Enterline and Fred W. Layman, of Casper;

James L. Simonton, Jerry W. Housel and E. J. Goppert, of Cody;

Willet M. Haight, of Riverton.

Wyoming

The undersigned hereby nominate H. Glenn Kinsley, of Sheridan, for the office of State Delegate for and from the State of Wyoming to be elected in 1948 for a three-year term beginning at the adjournment of the 1948 annual meeting:

Burt Griggs, of Buffalo;

Ray E. Lee, C. A. Swainson, M. S. Reynolds, A. Joseph Williams, James A. Greenwood, John U. Loomis, Ewing T. Kerr, M. A. Kline, Edward T. Lazear and Byron Hirst, of Cheyenne;

Oliver W. Steadman, Sarah Donley Steadman, James L. Simonton, Meyer Rankin, Jerry W. Housel and Milward L. Simpson, of Cody;

Sam Corson, Clarence W. Cook and P. W. Spaulding, of Evanston;

R. E. McNally, D. P. B. Marshall, William D. Redle, James Munro and A. W. Lonabaugh, of Sheridan.

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